

Supreme Court of the United States

OCTOBER TERM, 1970

No. 121

RICHARD MAYBERRY,

Petitioner,

—v.—

PENNSYLVANIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
PENNSYLVANIA, WESTERN DISTRICT

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**IN THE QUARTER SESSIONS COURT OF
ALLEGHENY COUNTY, PENNSYLVANIA**

DOCKET ENTRIES

Court met Thursday, Nov. 10, 1966 at 9:30 A.M. E.S.T.

PRESENT

Honorable Gwilyn Price Jr.
Honorable Albert A. Fiok
Honorable Frederic G. Weir

SPECIALLY PRESIDING

Honorable Earl S. Keim	10th Judicial District
Honorable James A. Reilly	14th Judicial District
Honorable H. Clifton McWilliams	47th Judicial District

COURT OPENED BY COURT CRIER—ANGELO COSENTINO

COMMONWEALTH

vs

HERBERT FRED LANGNES
RICHARD OLIVER JOSEPH MAYBERRY
DOMINIC CODISPOTI

No. 4672 of 1965 Approved

Charge: Holding Hostages in Penal Institution/Prison
Breach

Judge: Albert A. Fiok

A.D.A. Robert Medonis—advisors—T. Livingston for
Langnes, T. A. Harper for Codispoti, S. Saraf
for Mayberry

Pros. Harry Anderson

And now, Nov. 7, 1966 and Nov. 9, 1966 Defendants
present with counsel in open Court when Jury was se-
lected in this case

And now, Nov. 10, 1966 Defendants in open Court
with counsel severally plead not guilty. Issue joined by

District Attorney. A jury being called there came: Arcilius D. Lyle Sr., William J. Watt, Dominic Tignanelli, Irene Lucciola, Stella Cieslak, Doris G. Getty, John T. Miller, Joseph Plachecki, Mary E. Werthman, Marlene F. Kraft (Frechs), Steve A. Casper and Ruth Marlowe. Alternate are the following No. 13 Ferdinand Malik and No. 14 Dorothy Haenel.

And now, Nov. 18, 1966 at 1:55 P.M. Alternate Juror No. 14 Dorothy Haenel excused due to illness. Fourteen good and lawful men and women, duly summoned, returned, elected by ballot empanelled and sworn do respectively say,

And now, Dec. 9, 1966 as to each defendant—Guilty See verdict filed as charged on both counts.

And now, Dec. 9, 1966 in open Court, Defendants present with counsel when verdict recorded.

And now Dec. 12, 1966 as to each defendant the following sentence imposed.

Eodie, in open Court defendants appearing with counsel are each sentenced to pay a fine of $6\frac{1}{4}\epsilon$ to the Commonwealth pay costs of prosecution and undergo an imprisonment of not less than Fifteen (15) years or more than Thirty (30) years and stand committed, and be sent to the Western Correctional Diagnostic and Classification Center of Pennsylvania. This sentence to take effect upon the expiration of any of the sentences that each defendant is now serving. This sentence applies to the 1st Count of the indictment.

Eodie, as to each defendant, as to the 2nd Count of the indictment the following sentence imposed.

Eodie, in open court Defendants appearing with counsel are each sentenced to pay a fine of $6\frac{1}{4}\epsilon$ to the Commonwealth, pay costs of prosecution and undergo an imprisonment of not less than Five '5' years or more than Ten '10' years and stand committed and be sent to the Western Correctional Diagnostic and Classification Center of Pennsylvania. This sentence to take effect upon the expiration of the original sentence and any other sentence previously imposed which remains to be served at the time the the offense of Prison Breach was committed as to each defendant.

Application to Withdraw Appearance of Counsel—approved Oct. 26, 1965.

Order granting postponement filed Oct. 1965.

Order granting transcription of testimony, etc. filed Oct. 28, 1965.

Writ of Habeas Corpus filed & dismissed—filed Dec. 16, 1965.

Motion to Quash Indictments filed Dec. 16, 1965.

Petition Dismissing Writ of Habeas Corpus filed Dec. 21, 1965.

Letter requesting Speedy hearing on Motion to Quash Indictments dated Jan. 7, 1966 filed.

Commonwealth's answer to defendant's motion to quash indictments filed Jan. 7, 1966.

Brief Sur Application to Quash Indictment filed Jan. 11, 1966.

Deft's Counter—reply to Comm. Answer to quash indictments filed Jan. 17, 1966.

Order of Judge Olbum making Public Defender available to deft's. for consultation, etc. filed Jan. 17, 1966.

Letter dated Jan. 27, 1966 requesting copy of Judge Olbum's order making Public Defender available to deft's.

Opinion of Judge Graff denying petition to quash indictments filed Feb. 1, 1966.

Letter dated Feb. 3, 1966 requesting copy of transcript of hearing on motion to quash filed Feb. 9, 1966.

Order of Judge Graff authorizing authorities of State Correctional Institution at Pgh. to make transcription available to deft's. filed Feb. 9, 1966.

Application for Issuance of Defendant's subpoena filed Mar. 30, 1966.

Application for Bill of Particulars filed July 1966.

Application for Issuance of Deft's subpoena and show of proof filed Sept. 1966.

Petition to Stay all Proceedings pending Appeal to Superior Court filed.

Bill of Particulars and Acceptance of Service filed Sept. 21, 1966.

Deft's Waiver of Right to Counsel filed Sept. 29, 1966.

Order of Judge Pick to subpoena and produce witnesses at trial filed Sept. 29, 1966.

Order of Judge Fiok appointing Thomas A. Livingston, Esq. as counsel filed Sept. 29, 1966.

Order of Judge Fiok setting date of trial filed Sept. 29, 1966.

Petition for Subpoena of Witnesses filed.

Order of Judge Fiok directing Supt. of State Correctional Inst. at Pgh. to issue civilian clothing to deft's for trial filed Oct. 14, 1966.

Order of Judge Fiok re-setting date for trial filed Oct. 25, 1966.

Petition to Amend application of Issuance of Deft's subpoena filed Oct. 28, 1966.

Order of Judge Fiok directing certain witnesses be produced for trial of deft's. filed Nov. 1, 1966.

Petition for change of Venue—Denied by Judge Fiok filed Nov. 1, 1966.

Application to Quash Indictment—Denied by Judge Fiok filed Nov. 4, 1966.

Order of Judge Fiok directing Montgomery and Rockwell be produced as defense witnesses filed Nov. 10, 1966.

Order of Judge Fiok directing Manuel Madronal be produced as defense witness filed Nov. 21, 1966.

Pet. for copies of Notes of Testimony, etc. in Forma Pauperis filed Mar. 22, 1967.

Order of Judge Fiok for contempt of court filed Apr. 4, 1967.

Order of Judge Fiok directing transcripts be made available to deft. filed June 27, 1967.

Certioraries to Superior Court at Nos. 95 and 96 April Term, 1967 filed Jan. 19, 1967.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Nos. 102 to 113 March Term, 1967

COMMONWEALTH OF PENNSYLVANIA

v.

HERBERT F. LANGNES,
RICHARD OLIVER JOSEPH MAYBERRY,
DOMINICK CODISPOTI

APPEAL OF RICHARD OLIVER JOSEPH MAYBERRY

FOR APPELLANT:

RICHARD O. J. MAYBERRY, I.P.P.

FOR APPELLEE:

ROBERT W. DUGGAN, District Attorney
CHARLES B. WATKINS, Asst. Dist. Atty.

August 11, 1967 Transferred to Philadelphia
October 23, 1967 Continued
March 19, 1968 Non Pros
September 30, 1968 Transferred to Philadelphia
November 12, 1968 Argued 388

DECISION

April 23, 1969 Judgment of sentence affirmed. Jones, J.

Mr. Justice Roberts filed a concurring opinion.

Mr. Justice Eagen concurs in the result.

Mr. Justice Cohen concurs in the result.

Mr. Justice O'Brien filed a concurring and dissenting opinion.

March 20, 1968, Certificate of Non Pros sent to court below.

July 31, 1969 Remitted

DOCKET ENTRIES

January 30, 1967, Petition in Forma Pauperis granted.
Appeal from the judgment of sentence of 2 to 4 years
of the Court of Oyer & Terminer and General Jail
Delivery and Court of Quarter Sessions of the Peace
of Allegheny County at No. 4672 September Term,
1965.

February 1, 1967, Appeal and affidavit filed and writ
exit, returnable last Monday of September, 1967.

February 16, 1967, Appearance for appellee, filed.

July 21, 1967, Petition to continue, filed.

August 1, 1967, Answer filed.

ORDER

August 7, 1967

Petition granted

Per Curiam.

October 18, 1967, Petition to continue, filed.

ORDER

October 23, 1967

Petition granted

Per Curiam.

January 9, 1968, Appearance for appellee, filed.

February 26, 1968, Petition to continue, filed.

February 28, 1968, Answer filed.

ORDER

March 5, 1968

Petition denied

Per Curiam.

March 11, 1968, Petition for reconsideration of petition
to continue, filed.

March 12, 1968, Answer filed.

ORDER

March 14, 1968

Petition denied

Per Curiam.

DOCKET ENTRIES

ORDER

AND NOW, March 19, 1968, appellant having failed to proceed, a judgment of non pros is entered.

By the Court.

July 12, 1968, Petition to remove judgment of non pros, filed.

July 18, 1968, Answer filed.

ORDER

August 5, 1968, Petition granted. Judgment of non pros removed. Daniel F. Daley, Esq., of Luzerne County is appointed to represent petitioner on appeal.

By the Court.

August 7, 1968, Certified copies of Order sent to lower Court and to Daniel Daley, Esq.

ORDER

AND NOW, this 13th day of August, 1968, it is directed that the Order of August 5, 1968, appointing Daniel Daley, Esquire, of Luzerne County, to represent the Petitioner, Richard Oliver Joseph Mayberry, on appeal in the above captioned matter, be and the same is hereby revoked; and

IT IS FURTHER ORDERED that Peter Kanjorski, Esquire, of Luzerne County, be and is hereby appointed to represent the Petitioner, Richard Oliver Joseph Mayberry, on appeal in the above captioned matter.

Per Curiam.

September 16, 1968, Appearance for appellant, filed.

September 27, 1968, Petition to continue, filed.

September 27, 1968, Answer filed.

September 27, 1968, Record filed.

DOCKET ENTRIES

ORDER

September 30, 1968

Petition granted

Per Curiam.

May 1, 1969, Petition for Extension of Time to File
Petition for Reargument, filed.

May 8, 1969, Petition for waiver of counsel, filed.

ORDER

May 13, 1969

Petition granted with permission to file petition for
reargument on or before May 26, 1969.

Per Curiam.

ORDER

June 3, 1969, Petition granted, but counsel is directed
to file a brief amicus curiae.

Per Curiam.

MAYBERRY APPEAL

IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT

Nos. 102 to 113 March Term, 1967

COMMONWEALTH OF PENNSYLVANIA

v.

HERBERT F. LANGNES ET AL.

Appeal from Judgments of Sentence of the Court
of Oyer and Terminer of Allegheny County,
No. 4672, September, 1965

APPEAL OF RICHARD MAYBERRY

Argued November 12, 1968. Before BELL, C. J., JONES, COHEN, EAGEN, O'BRIEN and ROBERTS, JJ.

Appeals, Nos. 102 to 113, inclusive, March T., 1967, from judgments of Court of Oyer and Terminer of Allegheny County, Sept. T., 1965, No. 4672, in case of Commonwealth v. Herbert F. Langnes, Richard Mayberry et al. Judgments affirmed.

Contempt of court.

Defendant adjudged guilty of contempt and judgments of sentence entered, opinion by FIOK, J. Defendant appealed.

OPINION BY MR. JUSTICE JONES, April 23, 1969:

Herbert Langnes, Dominic Codispoti and Richard Mayberry were indicted by the Grand Jury of Allegheny County on two charges: (1) holding hostages in a penal institution and (2) prison breach. All three defendants were tried together and all three defendants were found guilty on both counts.

Richard Mayberry entered a plea of not guilty, waived

his right to representation by counsel and chose to act as his own counsel at trial.¹

On December 12, 1966, the court sentenced Mayberry to a term of imprisonment of not less than fifteen or more than thirty years on the first count and not less than five or more than ten years on the second count. These sentences were to be served consecutively at the expiration of any sentence Mayberry was already serving.

On the same day the court also sentenced Mayberry on eleven separate acts of criminal contempt which allegedly took place during the trial of the case and imposed a sentence of not less than one or more than two years for each separate act of criminal contempt, said sentences to be served consecutively at the expiration of the sentences imposed for the two crimes of which he had been convicted. From these judgments on the contempt charges Mayberry has filed the instant appeals.²

Mayberry in his brief presents three contentions: (1) that he was denied the right to trial by jury on the contempt charges in violation of the Sixth and Fourteenth Amendments to the United States Constitution; (2) that he was denied due process of law by being convicted and sentenced for criminal contempt without procedural safeguards; (3) that he has been subjected to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution in being sentenced to a minimum of eleven and a maximum of twenty-two years on the contempt charges. Mayberry's appointed counsel in his brief raises the following issues: (1) that the court erred in failing to provide Mayberry with substantive constitutional safeguards by not apprising him of the nature and elements of the crime

¹ The court appointed a representative of the Public Defender's office to act as Mayberry's consultant during trial.

² On March 19, 1968, a judgment of non pros. was entered because of Mayberry's failure to file a brief, but on August 5, 1968, this Court removed the judgment of non pros. reinstated Mayberry's appeal and appointed counsel to represent him in these appeals. Both Mayberry and his counsel have each filed separate briefs on Mayberry's behalf.

of criminal contempt, by not giving timely notice of the commission of criminal contempt, by not informing him of his right to counsel and in failing to provide him with counsel at the time of sentence; (2) that the statute providing for criminal contempt is unconstitutional as applied to the instant factual situation.

The contempt charges grew out of Mayberry's conduct during the course of the trial where he acted as his own counsel. An examination of the record reveals a course of conduct on Mayberry's part almost beyond belief and of an obviously and patently planned and determined attempt on Mayberry's part to interfere with the administration of justice and to make a farce and mockery of his trial. Mayberry accused the trial judge of denying him a fair trial, called him a "hatchet man for the State" and a "dirty S. O. B.," stated he would not "be railroaded into any life sentence by any dirty tyrannical old dog like [the judge]," told the trial court "to keep [his] mouth shut," referred to the court as a "bum" and a "stumbling dog," accused the court of working for the prison authorities and of conducting a Spanish Inquisition. He further told the judge that he was in need of psychiatric treatment and was "some kind of nut." These few examples are indicative of Mayberry's outrageous conduct during the course of the trial. Moreover, in open court, Mayberry stated his intention of disrupting the court's charge to the jury and carried out his intention to such an extent that the court was finally forced to have him gagged, placed in a strait jacket and removed to an adjoining courtroom to which the charge to the jury was broadcast through a public address system. The record further demonstrates beyond any question that Mayberry's behavior was calculated and planned with the aim of disrupting the orderly procedure of the trial and the administration of justice.

Right to Trial by Jury

In *Duncan v. Louisiana*, 391 U.S. 145, 20 L. Ed. 2d 491 (1968), the United States Supreme Court held that the Constitution guaranteed the right to jury trial in

serious criminal cases in state courts. In *Bloom v. Illinois*, 391 U.S. 194, 20 L. Ed. 2d 522 (1968), the Court was called upon to decide whether the Constitution guaranteed the right to a jury trial for a criminal contempt punished by a two-year prison sentence. Holding that "petty crimes need not be tried to a jury" and recognizing that the court had deemed it unnecessary under *Duncan* to fix "the exact location of the line between petty offenses and serious crimes," the court held that a criminal contempt punishable by a two-year prison sentence constitutes a serious crime which entitles a defendant to the right to trial by jury and that it is constitutional error to deny the defendant such right. If *Duncan* and *Bloom* are presently applicable, Mayberry would be entitled to a jury trial on the contempt charges.

However, the United States Supreme Court, in *DeStefano v. Woods*, 392 U.S. 631, 20 L. Ed. 2d 1308 (1968), held that *Duncan* and *Bloom* "should receive only prospective application." Since *Duncan* and *Bloom* were decided in 1968 and since Mayberry's trial took place in December, 1966, the rulings in *Duncan* and *Bloom* do not apply to Mayberry, and Mayberry is not entitled to a trial by jury on the contempt charges.

Denial of Due Process

The contempt charges upon which Mayberry was sentenced constituted *direct* criminal contempts which took place in open court in the presence of the court and the jury. Punishment for direct criminal contempt may be inflicted summarily. See: *Philadelphia Marine Trade Association v. International Longshoremen's Association*, 392 Pa. 500, 509, 140 A. 2d 814 (1958).³

The Act of June 16, 1836, P. L. 784, § 23, 17 P.S. § 2041, provides, inter alia, as follows: "The power of the several courts of this commonwealth to issue attachments and to inflict summary punishments for contempts

³ The Act of June 23, 1931, P. L. 925, § 1, 17 P.S. § 2047, provides for the due process requirements to which a defendant is entitled when charged with *indirect* criminal contempt.

of court shall be restricted to the following cases, to wit: . . .

"III. To the misbehavior of any person in the presence of the court, thereby obstructing the administration of justice." In a direct criminal contempt, the court has the inherent power to protect its judicial dignity and conscience and to protect itself from insult and abuse. See: *Aungst Contempt Case*, 411 Pa. 595, 192 A. 2d 723 (1963). Section 24 of the Act of 1836, *supra*, provides: "The punishment of imprisonment for contempt as aforesaid shall extend only to such contempts as shall be committed in open court, and all other contempts shall be punished by fine only." (17 P.S. § 2042)

In *Weiss v. Jacobs*, 405 Pa. 390, 394, 395, 175 A. 2d 849 (1961), this Court said: "In *In Re Oliver*, 333 U.S. 257, at 275-276, the United States Supreme Court stated: 'due process of law, . . . requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf either by way of defense or explanation. *The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the Judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the Court. . . . and where immediate punishment is essential to prevent 'demoralization of the Court's authority' before the public.* If some essential elements of the offense are not personally observed by the Judge, . . . due process requires, . . . that the accused be accorded notice and a fair hearing. . . .'" (Emphasis added)

The instant contempt charges arose out of the misconduct and misbehavior of Mayberry before the court and all the actions and utterances upon which these contempt charges were based took place in front of the trial judge. Under such circumstances, the court had plenary power to punish summarily for such contumacious conduct. To hold otherwise would be to offend the inherent powers of a court, particularly when the misconduct and misbe-

havior were as outrageous as that of Mayberry in the instant case.

We find no evidence under the circumstances of a violation of the constitutional due process requirements so far as Mayberry is concerned.

Did the Sentences Constitute Cruel and Unusual Punishment?

The court below imposed not one but eleven sentences, each based on a separate contemptuous act of Mayberry. Each sentence was for one to two years.

The instant record is replete with instance after instance of contumacious conduct on Mayberry's part. Moreover, it is evident beyond question that such conduct was not only in defiance of the court and its dignity but was planned with a view to disrupting the orderly process of the trial and preventing and obstructing the proper administration of justice.

Under the instant circumstances, we conclude that the imposition of eleven one-to-two year sentences is not cruel and unusual punishment.

We now consider the several contentions made by Mayberry's court-appointed appellate counsel in his separate brief on behalf of Mayberry.

Whether the Court Erred in Failing To Advise Mayberry of the Nature and Elements of Criminal Contempt and That His Actions Amounted to Criminal Contempt

Mayberry's counsel urges that it was the duty of the trial judge to warn Mayberry during the trial if and whenever his conduct became contemptuous, relying on *Glasser v. United States*, 315 U.S. 60, 86 L. Ed. 680 (1942), *Ogren v. Rockford Star Printing Co.*, 288 Ill. 405, 123 N.E. 587 (1919), and *Sacher v. United States*, 343 U.S. 1, 96 L. Ed. 717 (1952). We find nothing in these authorities which mandated that the trial judge in the instant case should have on each and every occasion warned Mayberry of his contemptuous conduct. The language and actions of Mayberry, even though he is a layman, were of such a nature that he had every reason to

know that his conduct was in contempt of court; moreover, it is evident from this record that Mayberry's conduct was part of a scheme and plan to disrupt and render chaotic the conduct of his trial. We see no reason, under the circumstances, why Mayberry on each and every occasion should have been warned of that of which he must have been fully aware. He knew that his conduct was outrageous and he deliberately planned such a course of conduct.

We find no merit in this contention.

Is the Act of 1836, *Supra*, Unconstitutional as Instantly Applied Because It Fails To Establish a Standard of Permissible Behavior and Because Its Terms Are Unclear and Indefinite?

We have carefully considered this contention of Mayberry's counsel and find it absolutely without merit.

The instant case presents an example of a person charged with a criminal offense who deliberately, consciously and intentionally enters upon his trial proposing to so obstruct, by his language and his actions, the orderly trial process in order to thwart the administration of justice. Such conduct cannot and should not be tolerated. To hold otherwise is to make a mockery of criminal trials and to render our courts subject to infamy and abuse.

While at first blush the totality of the sentences imposed might seem harsh, yet in view of Mayberry's conduct the severity of the sentences can be fully and completely justified. Mayberry was found guilty not only of criminal offenses but of having openly defied not only the court but the orderly process of law. As Mr. Justice JACKSON said in *Sacher v. United States*, *supra* (343 U.S. at 5): "The nature of the deportment was not such as merely to offend personal sensitivities of the judge, but it prejudiced the expeditious, orderly and dispassionate conduct of the trial."

Judgments of sentence affirmed.

Mr. Justice COHEN and Mr. Justice EAGEN concur in the result.

CONCURRING OPINION BY MR. JUSTICE ROBERTS:

As to appellant's claim that he was denied the right to a jury trial, I concur in the result reached by the majority solely on the ground that *Bloom v. Illinois*, 391 U.S. 194, 88 S. Ct. 1477 (1968), is not retroactive in application. See *DeStefano v. Woods*, 392 U.S. 631, 88 S. Ct. 2093 (1968).

CONCURRING AND DISSENTING OPINION BY MR. JUSTICE O'BRIEN:

I agree with the majority that Mayberry was not entitled to a jury trial. Even if *Bloom v. Illinois*, 391 U.S. 194, 88 S. Ct. 1477 (1968), applies to direct criminal contempts as well as indirect criminal contempts, which question I find it unnecessary to consider, *Bloom* has been held not to be retroactive. *DeStefano v. Woods*, 392 U.S. 631, 88 S. Ct. 2093 (1968). I thus concur in the affirmation of the contempt conviction.

However, I must dissent from that portion of the majority opinion which upholds the sentence imposed on Mayberry. Although appellate courts are naturally reluctant to interfere with the sentencing procedure, a matter within the discretion of the trial court, this Court has a duty to consider whether that discretion has been abused. *Commonwealth v. Edwards*, 380 Pa. 52, 110 A. 2d 216 (1955). The duty is particularly crucial in direct criminal contempt cases where no statutory limit is placed upon the trial judge's discretion. *Brown v. United States*, 359 U.S. 41, 79 S. Ct. 539 (1959); *Green v. United States*, 356 U.S. 165, 78 S. Ct. 632 (1958).

I wish to emphasize that I hold no brief whatsoever for appellant's utterly deplorable conduct and I sympathize with the trial judge for the indignities both he and the judicial system were made to suffer as a result of appellant's conduct. Nonetheless, I believe that the sentence imposed here exceeded all bounds of reasonableness. While the court below treated each of appellant's comments as a separate contempt and imposed eleven separate one to two year sentences to run consecutively, I think that a more realistic view of what occurred was

that there was only one contempt—appellant's trial conduct as a whole—and that for this he was given a sentence of eleven to twenty-two years. Cf. *Yates v. United States*, 355 U.S. 66, 78 S. Ct. 128 (1957).

My research discloses no case in which the punishment meted out even approaches that here. The majority quotes, as support for the sentence here, from *Sacher v. United States*, 343 U.S. 1, 5, 72 S. Ct. 451 (1952): "The nature of the deportment was not such as merely to offend personal sensitivities of the judge, but it prejudiced the expeditious, orderly and dispassionate conduct of the trial." Yet those held in contempt in *Sacher* were sentenced only to terms of up to six month's imprisonment for a course of conduct that was as flagrant a defiance of the orderly processes of court as that involved here. *Sacher* and his fellows, *inter alia*: "Insinuated that there was connivance between the Court and the United States Attorney . . . Repeatedly made charges against the Court of bias, prejudice, corruption, and partiality . . . Made a succession of disrespectful, insolent, and sarcastic comments and remarks to the Court . . . [etc.]." *United States v. Sacher*, 182 F. 2d 416, 431 (2d Cir. 1950).

Although there is no doubt that the dignity of our courts must be upheld, by the contempt process, if necessary, in a Commonwealth where assault and battery is punishable by a maximum of two years' imprisonment, larceny by a maximum of five, voluntary manslaughter by a maximum of twelve, rape by a maximum of fifteen, and second-degree murder by a maximum of twenty, a maximum sentence of twenty-two years for interference with the courtroom process and insults to the judge is cruel and unusual. I note that in title Three of The Penal Code of 1939, entitled "Offenses against Public Justice and Administration", of the thirty-one crimes enumerated, only two—perjury (seven years) and prison breach (ten years) carry a maximum sentence of more than five years. No crime in the category carries with it a penalty approaching the twenty-two years given appellant, and I must dissent from the imposition of that sentence.

VOL. I

IN THE COURT OF OYER & TERMINER
AND GENERAL JAIL DELIVERY OF
ALLEGHENY COUNTY, PENNSYLVANIA

4672 of 1965

COMMONWEALTH OF PENNSYLVANIA

vs.

HERBERT F. LANGNES
RICHARD OLIVER JOSEPH MAYBERRY
DOMINICK CODISPOTI

Pittsburgh, Pennsylvania
November 7, 1966

BEFORE: HON. ALBERT A. FIOK, J., AND A JURY

TRANSCRIPT OF OFFICIAL NOTES OF TESTIMONY

COUNSEL PRESENT

On behalf of the Commonwealth:

ROBERT X. MEDONIS, ESQ., Assistant District Attorney

On behalf of Defendant Langnes:

THOMAS A. LIVINGSTON, ESQ.

On behalf of Defendant Mayberry:

SAMUEL H. SARRAR, ESQ., Public Defender

On behalf of Defendant Codispoti:

THOMAS A. HARPER, ESQ., Public Defender

JOHN H. GOODWORTH
Official Court Reporter
312 Courthouse
Pittsburgh, Pennsylvania

[fol. 5] MR. LIVINGSTON: Prior to the voir dire I asked the Court before, and ask again, to have an opportunity out of the hearing of the jury, preferably at side bar with myself and the client I have been provided to advise.

MR. HARPER: I would also make the same request.

THE COURT: We will not have Mr. Langnes at side bar. We will have counsel at side bar.

MR. LIVINGSTON: I want to interrogate Mr. Langnes for the purpose of the record out of the hearing of the jury.

[fol. 6] THE COURT: Well, I would suggest that you interrogate him in private. Then if you want to have a side bar you may come up at side bar.

MR. LIVINGSTON: I want to put questions and answers on this record to make clear to protect myself in the event of an appeal. I think it is proper, and I have done it before in matters of this type. I think because of the uniqueness of this particular situation that I might approach the bench and indicate to the Court precisely what I hope to do out of the hearing of the jury.

THE COURT: You may approach the bench.

(At side bar conference.)

MR. LIVINGSTON: I want to put on the record, as I have put before Judge Graff, with the passage of time, I want to bring this thing up to date. I want to bring before this Court and on this record and to advise Mr. [fol. 7] Langnes of the offenses that he has been charged with, advise him of the seriousness of these offenses, and the punishment to which he may be subjected as a result of a conviction, and with the full knowledge of these crimes and potential punishments, I want him to state on the record it is his desire not to have me represent him even though appointed as an adviser by the Court. I don't want to be criticized in an Appellate Court. Before Judge Graff I put on the record what my position was and only care to do this because of the passage of time. I don't want something to happen on appeal where he changes his mind after several weeks interval, and I

want it on the record to show it is my intention as adviser in this court to not interfere with the right that he has elected to proceed by representing himself, and of course, I will make myself available at all times during this trial, that I will make myself available after court hours if this be his wish, purely as an adviser, but I am [fol. 8] not going to take an active part in this case in the present state of the record without his requesting this.

I think this would constitute an infringement upon his right to represent himself. I don't want to interfere with it.

THE COURT: That may be so. However, you have been appointed by this Court to represent Mr. Langnes. While you may with some propriety make that statement as a matter of record, I would request that insofar as any matters of a leading nature are concerned that perhaps you should advise Mr. Langnes about the matters, and during the course of the trial as well as the voir dire examination, possibly you may want to put certain other matters on the record to protect the record and to protect not only yourself but the right of Mr. Langnes in this case.

I think that we will have a much better record, and [fol. 9] that will be done so as to eliminate any possible questions later on as to what your role in this case has been.

MR. LIVINGSTON: I may say this for the record, Your Honor, that I recognize as a lawyer that this individual has a lawful and solid right to represent himself. As a lawyer I could not in good conscience either by direction of the Court or otherwise interfere with this particular right. I have made my position clear prior to this trial, and I make my position clear again that I will not in this case interfere in any way with the rights of this particular defendant to handle and conduct his own trial. I think it is foolish that he tries to do it.

THE COURT: Yes. I appreciate that, but I don't want the impression to be perpetuated here that you are going to be sitting here going through motions. I recognize the fact that no matter what any of counsel

do in this matter the defendants will insist upon [fol. 10] certain questions, upon certain procedures that they wish to follow, and it is only to the extent that I don't want the record to show that you are merely sitting by inactive, and that from time to time there may be necessity of stating for the record that you have advised the defendants one way or another. Not that they will follow your advice, but as a matter of protection, because I don't want this record to show or even have someone interpret this record as showing that we have only gone through the formal motion of appointing counsel. There will be times that I think it will be the duty of counsel to speak, and if the defendants in their right to represent themselves do not wish to follow the advice of counsel, that is their prerogative. But from time to time I think it will be incumbent upon counsel to state that so that there can be no misunderstanding here, that it is the effective assistance of counsel rather than just motions.

[fol. 11] MR. LIVINGSTON: From our prior encounter it is quite clear that I won't shirk my responsibility, and I will advise where asked by the client. I will not hesitate to put my opinion of the legal consequences of any particular act on record. This I will do. But I simply want to state my position that I will not in any way interfere with the rights of this defendant Langnes to represent himself. I will not hesitate when called upon to speak in his behalf in open court.

I have made myself available throughout the trial. I have advised the institution and put a great deal of time in the case up to now and have not just been in a passive position. I have been very active, but as the Court may well know much of my advice has gone unheeded.

I don't want to be in the position of taking a part and being criticized in the Appellate Court as to what might develop from an inference it is my advice when in [fol. 12] fact it isn't.

THE COURT: I understand your position. Does any other counsel wish to place anything on the record at this stage?

Then we will grant you the right to call each individual client up separately and apart from the others so that you may in his presence place your views on the record.

MR. SARRAF: I think the record should show for the public defender's office an adviser has been assigned originally, Your Honor, and Mr. Ross has indicated that he may ask Your Honor if we may be rotated or not. That is another problem, Your Honor, but you may want to take that up with Mr. Ross.

THE COURT: I can answer that quickly. You will not be rotated.

MR. SARRAF: All right. But I suggest that from our inception Mr. Livingston has quoted our status in this case, I believe. Am I right?

[fol. 13] MR. LIVINGSTON: Further, Your Honor, I would like to get something else on the record in behalf of the defendant Dominic Codispoti. I again conferred with Mr. Codispoti in regards to representation in this case, and he has again confirmed that he wishes to represent himself. He has stated no objection to me sitting there as an adviser to him, but he did want me to call to the Court's attention that a petition has been filed on behalf of all three defendants whereby they are requesting this Honorable Judge to disqualify himself from hearing this case.

Now, certainly since they are trying the case themselves all I can do is advise the Court that they have filed a petition, and I think that it is within their rights that the Court rule on their petitions before we engage this jury.

THE COURT: This is a petition that was just filed or just presented because we do have a petition to that [fol. 14] effect, and the Court has taken action on that.

MR. LIVINGSTON: The petition was filed some time ago.

THE COURT: We will make it a matter of record in these proceedings, although there is an order filed in connection therewith. The request or petition of the respective defendants is denied.

(End side bar conference.)

(At side bar conference.)

MR. LIVINGSTON: Mr. Langnes, when this case was called for trial before I indicated to you what the nature of the charges were. I indicated to you on prior occasions that you have been charged with prison breach and holding hostage in a penal institution. Did you hear the Court this morning describe what those offenses were?

MR. LANGNES: Yes, I did.

MR. LIVINGSTON: Are you familiar with the [fol. 15] offenses?

MR. LANGNES: I am fully familiar.

MR. LIVINGSTON: Are you familiar with the fact that for a prison breach you could be sentenced to a term not exceeding ten years?

MR. LANGNES: Yes.

MR. LIVINGSTON: And for holding a hostage you could be sentenced to undergo imprisonment by separate and solitary confinement at labor for the term of your natural life, or to pay a fine not exceeding \$10,000 and undergo imprisonment by separate and solitary confinement at labor for any term of years?

MR. LANGNES: Yes, I understand.

MR. LIVINGSTON: With your familiarity of the offenses that have been charged against you and the seriousness of the consequences of these offenses, are you also aware that you are entitled to have counsel appointed to represent you?

[fol. 16] MR. LANGNES: Yes, I am.

MR. LIVINGSTON: Are you aware of the fact that I have been appointed as counsel to advise you because you have indicated your desire to represent yourself?

MR. LANGNES: Yes.

MR. LIVINGSTON: With the full knowledge of the facts as I have recited them to you, is it your desire now to have me represent you or to represent yourself?

MR. LANGNES: I still maintain my position in representing myself but you as an adviser.

MR. LIVINGSTON: I will make myself available to you at your request during the court of the trial, but you desire to represent yourself, is that right?

MR. LANGNES: Yes.

THE COURT: You understand that you will be treated and accorded every privilege you are entitled to under the law, but you will not be accorded any privilege that you are not entitled to under the law, and therefore [fol. 17] on any questions of rulings on either law or evidence you will be bound notwithstanding the fact that you do represent yourself. Do you understand?

MR. LANGNES: Yes, sir, I understand that, Your Honor. I mean, all I ask is that I be granted the rights I am entitled to. I didn't want to ask for rights that I had no right to, but I think—

THE COURT: That goes without saying, Mr. Langnes.

MR. LANGNES: But I think the fact that I am representing myself, and I don't think I should be taken advantage of neither, insofar as if there is a technicality in the law that I may overlook. I would appreciate the fact that if either Your Honor or Mr. Livingston would bring me up to this, it is only fair to protect the record.

THE COURT: The Court has to make rulings in accordance with the law. If you feel you are aggrieved [fol. 18] by that under our procedure you may have an exception to that. The Court does not intend to make an explanation of its rulings each time a ruling is made, and this is not intended to go into the whys and wherefores of the rulings, but simply a ruling is made, and if you feel aggrieved by it you may state that for the record, and for your information a special exception is not required. You automatically have an exception.

MR. LANGNES: Yes, sir.

MR. LIVINGSTON: I might say, Your Honor, that I have directed in conversation with all three of the defendants in this case that once the ruling is made by the Court in the matter there is no need for any further argument. The remedy is by appeal.

MR. LANGNES: Yes, I understand that an exception is automatic. But could we just, in other words, at side bar could we discuss—

THE COURT: This will be the last side bar you will [fol. 19] have. Any side bars that you have in the future will be conducted by your counsel.

MR. LANGNES: Without myself being present?

THE COURT: Correct.

MR. LANGES: Even though I am representing myself?

THE COURT: A side bar is only for counsel.

MR. LANGNES: Then I can get the transcript of what was said for appeals?

THE COURT: Eventually you will have and are entitled to a full transcript.

MR. LANGNES: I ask this in order to protect myself that if I am not present I will not know what was said.

THE COURT: You can convey that information to your counsel who will come to side bar. We are not going to have that. We are according you this opportunity of appearing at side bar as a preliminary matter. We do not intend to conduct this case by having you come up at [fol. 20] side bar. Side bar, as I have indicated, is limited to members of the bar. You will not come to side bar as defendants.

MR. LANGNES: But being as this is the only side bar I will be allowed to, can I put on the record right now so that I know it is put in, this matter about our witnesses—will we be allowed to present a show of proof for these witnesses?

THE COURT: I have already requested that, and it is a matter of record that the witnesses that had been requested will be called on behalf of not only you, but the other defendants as well, and you have stated that in a petition as I requested you to do so the reasons for calling certain witnesses. The Court has ruled on the propriety of calling certain witnesses, and those witnesses based upon setting forth the cause of the reason for calling certain witnesses has been made a part of the record by the Court. Those that were deemed essential to the defense, of course, have been subpoenaed and will be called. [fol. 21] MR. LANGNES: But Your Honor, excuse me. Two main factors are involved here. I believe when we filed that motion, or that show of proof to you, inasmuch as this show of proof would be censored through prison authorities, we couldn't very well give you the

full details in it. I mean, in my particular case in one of my pleas of not guilty by reason of temporary insanity, and another one is not guilty by reason of entrapment, I don't think you were aware of this, Your Honor, and the witnesses that were already allowed by Your Honor are not as important as the ones that have been denied.

There are the ones that have not been allowed to testify in my behalf and in behalf of my co-defendants who are main witnesses. They are the most essential.

THE COURT: Well, you better set them forth and set them forth quickly, because the only thing I can proceed upon is the petition you provided in detail why [fol. 22] those witnesses desired are to be called. I don't want to go into that matter at this time because we are not at that stage of the proceedings, but if you want to present any additional reasons you better present them quickly.

MR. LIVINGSTON: Your Honor has received a copy of show of proof which these people were told by Judge Graff to prepare and have the Court decide on these.

THE COURT: I have not seen that.

MR. LIVINGSTON: Give that to the Court for the Court's perusal. Judge Graff had taken this up with the particular individuals and indicated that they should be specific.

MR. LANGNES: If Your Honor pleases, those are—

THE COURT: That is exactly the same thing that I initially requested from those same defendants when they were first before me.

MR. LIVINGSTON: They indicated to Judge Graff [fol. 23] that there were certain things they couldn't put out through the prison channels, and they could personally do this.

MR. LANGNES: The one, Your Honor—

THE COURT: All right. I will consider that. Let's go on with the voir dire.

MR. SARRAF: We have another matter to take up.

MR. HARPER: I want to get on the record at this time that I have conferred with the defendants again, particularly Mr. Codispoti and Mr. Mayberry, and they

have given to me a copy of a petition for writ of injunction against Your Honor which they had filed in Federal Court on October 31 of this year, and an order signed by Judge Willson.

THE COURT: You better refer to a miscellaneous number of that so we have a record of it.

MR. HARPER: The miscellaneous number is 4144, and all three of the named defendants versus the Honorable [fol. 24] able Albert A. Fiok, Judge of the Court of Common Pleas of Allegheny County, Pennsylvania, was designated as a defendant. This was a petition for writ of injunction preventing Judge Fiok from presiding over this trial.

Of course, Your Honor, I did not know anything about this, but they have advised me that the order was denied which the Honorable Joseph P. Willson, District Judge, has, and they have appealed their ruling to the Third Circuit. So that the Court will know in the matter of the petition which I mentioned previously that they have an action pending in another court in regard to that matter.

THE COURT: I assure you that will not stop these proceedings, and we will go on.

MR. SARRAF: In connection with that statement made by Mr. Harper, the defendant Mayberry would like to talk to the Court. He doesn't want an intermediary to make the statement. He is going to make the statement [fol. 25] between himself and the Court at side bar.

THE COURT: What is the nature of the inquiry?

MR. SARRAF: I don't know.

THE COURT: Find out before the inquiry is made.

MR. SARRAF: He wants to make it in person because he says he is entitled to make it because he is going to conduct this trial himself. He thinks it should be done before the voir dire.

THE COURT: I don't know whether this is a matter of voir dire or not. Not knowing that we will permit him to come up and make whatever statement he desires.

(Thereupon Mr. Mayberry approach side bar.)

MR. MAYBERRY: I have a few matters I would like to get on the record, Your Honor, before we proceed picking the jury.

THE COURT: Is that in connection with the picking of a jury?

[fol. 26] MR. MAYBERRY: It is concerning our witnesses and how this trial is going to proceed in being as the defendants are representing themselves.

THE COURT: That is by your own choice.

MR. MAYBERRY: Yes, sir.

THE COURT: Yes.

MR. MAYBERRY: And I understand from speaking to Mr. Langnes that we are not going to be permitted to be present at any side bar that may occur during the trial.

THE COURT: No, you will convey that to your counsel and counsel will make the side bar to the Court.

MR. MAYBERRY: Your Honor, I would object to this on the ground that I am representing myself.

THE COURT: All right. You may have an exception on the record.

MR. MAYBERRY: Your Honor, will I be able to [fol. 27] address the Court out of the hearing of the jury if a matter comes up?

THE COURT: You may through counsel.

MR. MAYBERRY: I have no counsel.

THE COURT: Counsel has been assigned.

MR. MAYBERRY: Purely as an adviser.

THE COURT: If you don't wish to avail yourself of the right, that is up to you. Side bars are intended for counsel of record, not for defendants, and therefore we are going to give you the opportunity at this time. We are not precluding a side bar through your counsel, but we do not propose to have defendants come up to side bar.

You will have to utilize, if you so desire, the services of counsel. Counsel will then make your desires known and protect the record for you.

MR. MAYBERRY: I feel we are entitled to hear the proceedings here at side bar inasmuch as we are defending ourselves and have waived our right to counsel. We [fol. 28] have waived right to counsel, not the right to represent ourselves.

THE COURT: That doesn't give you the right to

participate in side bar discussions which are matters of discussions between counsel of record and the Court.

MR. LIVINGSTON: On behalf of the defendant Mr. Langnes I now object in view of my capacity as adviser. I have no objection to being at side bar which is purely within the discretion of the Court, but I think when he is representing himself he is entitled to be present at every stage of the proceedings, which includes a side bar if there be one.

THE COURT: I have no objection to the defendants making a statement right in open court. I will not permit side bars between the Court and the defendants. You may have an exception.

MR. LIVINGSTON: I have no objection, Your Honor.
[fol. 29] MR. MAYBERRY: Will we be permitted to address the Court directly during this trial?

THE COURT: On any matters relevant to the proceedings, you may. We will not go into long discussions or the whys or wherefores on the rulings of evidence. We will make our rulings. You will have an automatic exception which will protect the record.

MR. MAYBERRY: Will we be given a chance to state a reason for the objection?

THE COURT: Not the reason, just the objection, or if there is any special reason you want to state on the record, we will permit you to make that; but no long discussions.

MR. MAYBERRY: Will we be permitted to address the jury when we open for the defense?

THE COURT: We will afford that by first giving that opportunity to counsel. If, of course, you do not wish [fol. 30] counsel to do that for you, we will permit you to make that opening, and the same thing will prevail, and the same rights will be accorded to you insofar as the closings are concerned, but first preferably through counsel. Whether you wish to take advantage of that or not, it is entirely up to you.

MR. MAYBERRY: We will be given an opportunity then if we wish to speak to the jury in opening and summation? We will be given that opportunity?

THE COURT: Yes. You will be limited in time like

every other person would be whether it is counsel or otherwise, but insofar as either your opening or closing statements are concerned, if you do not wish counsel to make that for you we will permit you to do that.

MR. MAYBERRY: As for our witnesses, Your Honor, we submitted a list of a total of 40 witnesses. That is 40 witnesses—

THE COURT: Yes. The Court has already [fol. 31] ruled on that, and I understand that you have presented a separate petition, a copy of which I have, and sometime today I will carefully consider that, and if additional reasons are presented which requires or necessitates the subpoenaing or the production of any other witnesses that will be accorded to you.

If on the other hand the Court feels that no valid reasons subsist for the production of these witnesses our previous ruling will stand.

MR. MAYBERRY: Well, Your Honor, will I be given an opportunity to read into the record the reasons why we want these witnesses and what—

THE COURT: No, you will not, because that is already a matter of record.

MR. MAYBERRY: It is not a matter of record, our full show of proof. We filed—

THE COURT: Then you better file an original so we will file that as a matter of record.

MR. LIVINGSTON: Where is your original, Mr. [fol. 32] Mayberry?

MR. MAYBERRY: I have a copy in the papers. We sent the original, but that is not a complete show of proof.

THE COURT: The judge undoubtedly filed it. I will check. If it is not filed we will file it as a matter of record.

MR. MAYBERRY: That was not a full show of proof, the original one, because we had to send it through guards who were prosecuting witnesses against us, and—

MR. LIVINGSTON: Mr. Mayberry, I have just received from Mr. Langnes on Saturday under the caption show of proof which seems to be more elaborate. Is that a full show?

MR. MAYBERRY: That is a full show.

MR. LIVINGSTON: We will make that a part of the record.

THE COURT: I am suggesting that you make that a part, and not spread it upon the instant record.

[fol. 33] MR. MAYBERRY: This is a full show of proof.

MR. LIVINGSTON: That can be made a part of it.

THE COURT: It will be filed as a matter of record.

MR. MAYBERRY: Will we be given an opportunity to read into the record what we intend to prove by those witnesses?

THE COURT: No.

MR. MAYBERRY: Well, I would like to object to that not being given an opportunity because—

THE COURT: You may have your objections. It is filed of record. This will be filed of record. It is already part of the record.

MR. MAYBERRY: Also, Your Honor, the whole thing in this case remaining—it seems like the Court has the intentions of railroading us and not giving us—

THE COURT: I will not countenance any remarks like that. The side bar is over.

[fol. 34] MR. MAYBERRY: May I say something?

THE COURT: No.

MR. MAYBERRY: Well, we have a petition to disqualify you as the trial judge.

THE COURT: That has been filed for the record in Federal Court, and there is nothing here, and we will take it that you are making an oral motion to disqualify me as a judge, and that is denied.

MR. MAYBERRY: We have filed written motions with Judge Ellenbogen, President Judge.

THE COURT: That is a matter of record, too, and that has been ruled upon, and that motion was denied. So for the purposes of this record let me state again that your motion to disqualify the trial judge is denied.

MR. MAYBERRY: Are you aware that we have an action in the United States Circuit Court of Appeals under the Civil Rights Act for restraining order?

[fol. 35] THE COURT: You may proceed with that as you see fit. It is not going to stop the proceedings here. These proceedings will go on.

MR. MAYBERRY: Even though you are aware that we have an action against you in the Federal Courts?

THE COURT: The Court is not aware of it, but since you told me it is a matter of record.

MR. HARPER: I think it is a matter of record, Your Honor, insofar as what I recited.

THE COURT: You have conveyed it as a matter of record.

MR. HARPER: Correct.

MR. MAYBERRY: Also, we would like to know the number of challenges we will be given.

THE COURT: Under the law you will be given eight peremptory challenges collectively.

MR. MAYBERRY: Even though there is a conflict [fol. 36] among the three defendants?

THE COURT: Under the law you will have eight peremptory challenges collectively.

MR. MAYBERRY: Under the law we are entitled to a severance like I asked for with the United States Supreme Court.

THE COURT: You have a right to request it. You don't have a right to a severance.

MR. MAYBERRY: I have decisions that say otherwise.

THE COURT: Your rights will be protected on that.

MR. MAYBERRY: Will we be given separate trials?

THE COURT: No.

MR. MAYBERRY: Even though there is a conflict of interests?

THE COURT: I have ruled on the request. There will be no severance.

MR. MAYBERRY: And we are going to be forced [fol. 37] to accept eight challenges collectively even though there is a conflict?

THE COURT: You are not forced. That is what the statute provides, and you will abide by the statutes like any other person.

MR. MAYBERRY: Yes, sir, Your Honor, but I also have cases that say where there was a conflict of interests we are entitled to eight apiece.

THE COURT: You will be entitled to eight peremptory challenges collectively.

MR. MAYBERRY: I would like to object for the record to being forced to accept eight when my co-defendants—

THE COURT: You have that as a matter of record now.

MR. MAYBERRY: —when there are conflicts between us. Also, I would like to ask will we be given an opportunity to enter our pleas to this indictment which we haven't given. Our formal pleas haven't been given. Our defense—

[fol. 38] THE COURT: We are at the stage now trying to select a jury in this case. After the determination of that selection if you wish to place as a matter of record your pleas in this case they will be received at that time.

MR. MAYBERRY: I would also like to ask Your Honor that we be given separate tables from the prosecution so that we can confer without being overheard.

THE COURT: We will have the usual procedure that we have here with one side of the table for the defense and the other side of the table for the prosecution.

MR. LIVINGSTON: If Your Honor please, with respect to this matter, Judge Graff made a ruling in this case, and I would ask it continue now, that any conferences between defendants and their advisers be considered as privileged communications even though made in the presence of deputy sheriffs so that they are not [fol. 39] competent to testify. This is a departure from the law. Judge Graff ruled that this privilege would be granted, and I ask this Court to consider the same in view of the fact that they are all together in this matter, and it is highly irregular for a conversation between defendant and adviser to be overheard by a deputy sheriff and be called.

THE COURT: We will not have any deputy sheriff testify to any conversation. However, they will be pres-

ent. They will be present but no deputy sheriff will be called to testify as to any confidential communications between counsel and the respective defendants.

MR. MAYBERRY: Would you also direct them not to converse with others about anything they may hear use discuss, our defense among the defendants. They overheard us speaking about our defense. Will you direct them now not to converse with others about what they may hear us speak?

[fol. 40] THE COURT: At the proper time I will take care of that.

MR. MAYBERRY: And also I would like the record to note there was approximately 15 uniformed police here in the court—

THE COURT: They are not uniformed police. They are deputy sheriffs, officers of this court who have every right to be here.

MR. MAYBERRY: Yes, and I would like to state for the record that it creates prejudice and not being the normal thing to have in the courtroom, that is, to be saturated with uniformed police. You may call them what you want, but they are police. They are uniformed.

THE COURT: They are officers of this court.

MR. MAYBERRY: Yes. So is the District Attorney, and they are still officers. They carry guns—

THE COURT: They do not carry guns.

MR. MAYBERRY: They carry gun belts, let's say [fol. 41] that, with bullets, blackjacks, and all that that makes them law enforcement officers.

THE COURT: Is there anything else you want to say?

MR. MAYBERRY: I would like to have the law enforcement officers wear civilian clothes so the jurors will not be prejudiced against us.

THE COURT: That motion is denied.

MR. MAYBERRY: I would like to ask that the State witnesses be segregated in this case.

THE COURT: That motion is denied.

MR. MAYBERRY: Your Honor, I object to all these overrulings.

THE COURT: You automatically have an exception.

MR. MAYBERRY: I would like to have a fair trial of this case and like to be granted a fair trial under the Sixth Amendment.

THE COURT: You will get a fair trial.

[fol. 42] MR. MAYBERRY: It doesn't appear that I am going to get one the way you are overruling all our motions and that, and being like a hatchet man for the State.

THE COURT: This side bar is over.

MR. MAYBERRY: Wait a minute, Your Honor.

THE COURT: It is over.

MR. MAYBERRY: You dirty sonofabitch.

(End side bar conference.)

* * * *

[fol. 205] MR. MAYBERRY: As far as the record being protected, Your Honor, I will—I would like to pro-
[fol. 206] tect the record, and I would like you to note that we have filed a formal written waiver of our right to counsel, and we have demanded our absolute constitutional right to defend ourselves in persona.

THE COURT: You may proceed.

MR. MAYBERRY: Counsel has been appointed in an advisory capacity.

* * * *

[fol. 1256] BY MR. CODISPOTI:

Q Mr. Carothers, did you have occasion to speak to [fol. 1257] Dominick Codispoti at any time after June 27th pertaining to this particular charge following the week—that is, after June 27th? And other than the interrogation with Sergeant Anderson?

A I never did.

Q Where was the defendant Dominick Codispoti after he was removed from the observation cell, Mr. Carothers?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. CODISPOTI:

Q Did you not speak to defendant Dominick Codispoti

in the punishment block approximately three to four days after June 27th?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. CODISPOTI:

Q Mr. Carothers, have you ever observed Warden Maroney speaking to the defendant Dominick Codispoti at any time other than the time in the hospital during the June evening of June 27, 1965?

THE COURT: Are you saying after June 27, 1965?

MR. MEDONIS: Objection.

THE COURT: Sustained.

[fol. 1258] (Exception noted.)

MR. CODISPOTI: I am asking that question to impeach the witness' credibility, Your Honor.

THE COURT: Go on.

MR. CODISPOTI: Your Honor, am I going to understand that you refuse to allow defendant Dominick Codispoti to ask any questions that will impeach the credibility of the witness for any questions that took place after the arrest?

THE COURT: I am going to prohibit you from asking any questions of things that occurred after June 27, 1965, that is correct.

MR. CODISPOTI: Even for impeachment purposes, Your Honor?

THE COURT: I have answered you.

MR. CODISPOTI: Then I further ask Your Honor in the event that my question is relevant to this situation that happened on June 27, 1965, are you still denying [fol. 1259] me the right to ask the questions?

THE COURT: You will ask it and I will rule on it.

MR. CODISPOTI: Are you trying to protect the prison authorities, Your Honor? Is that your reason?

THE COURT: You are out of order, Mr. Codispoti. I don't want any outbursts like that again. This is a court of justice. You don't know how to ask questions.

MR. MAYBERRY: Possibly Your Honor doesn't know how to rule on them.

THE COURT: You keep quiet.

MR. MAYBERRY: You ought to be Gilbert and Sullivan the way you sustain the district attorney every time he objects to the questions.

THE COURT: Are you through? When your time comes you can ask questions and not make speeches.

* * *

[fol. 1263] THE COURT: That is correct, Mr. Mayberry, and at the proper time I will state to the jury—at this time I will state to the jury I have no feelings [fol. 1264] about this case. I do have feelings that the contempt that the defendants have shown in this case towards the Court, but at the proper time I will instruct the jury to disregard that and to try his case solely and simply upon the evidence that has been presented in this case.

MR. MAYBERRY: Now, Your Honor, am I to understand that you are holding the defendants in contempt?

THE COURT: I didn't say that.

MR. MAYBERRY: Do I understand you to say that the defendant Mayberry has exhibited contempt for the process of law and justice in this court?

THE COURT: We will take care of that matter at a later stage. Proceed with your cross-examination.

* * *

[fol. 1382] MR. LIVINGSTON: I would ask Your Honor to repeat in his own words the two alternatives [fol. 1383] that were put to the defendants for the procedure to be followed in this defense.

THE COURT: Well, I have indicated to the defendants before the noon recess that we can proceed in one of two ways. First, that a witness may be called and examined by all three of the defendants in turn as part of their individual cases. That would be one procedure. The other procedure would be to have the witnesses called for each particular defendant in turn, and then have the same witness called for a second and third time, of course, eliminating any questions or testimony that has

been developed or produced for and on behalf of one or the other. By that I mean, that there would be no repetition of the same testimony regardless of the number of times that a witness may be called.

I have also indicated that insofar as a logical sequence is concerned, that it would be preferable to use the first method that has been suggested by the Court. The Court is not going to insist on that, however. If you want to [fol. 1384] use the alternative method the Court will consider that method of approach.

MR. MAYBERRY: I understand. But am I to understand, Your Honor, that by the first suggestion that you made that the defendants will be able to cross-examine the witness also if there is some matter brought out prejudicial on direct examination by Langnes, for instance, and say the witness would bring out something that would be incriminating against the defendant Mayberry or defendant Codispoti, could they in addition to proving their case cross-examine the witness on that particular matter, if it would develop?

THE COURT: Of course, I am going to give you every right that is accorded to you under the law, and if you feel that cross-examination of a particular witness is desired on any particular point, I am going to permit you to do that, keeping in mind, of course, that if you do cross-examine extensively and destroy the veracity or [fol. 1385] credibility of that witness, and then call that witness to testify, you may be hurting yourself.

MR. MAYBERRY: I was referring to witnesses that Langnes may use that neither one of the other defendants may use.

THE COURT: There is no problem there because whatever you are going to develop if proper cross-examination, of course, it will be permitted. You will have the opportunity of cross-examining. I think you should have the right to cross-examine provided it is kept within due bounds, and provided further that you do not intend or attempt by such cross-examination to establish your own defense from it, because that will not be permitted.

In other words, whatever defense you have in this case you will be permitted to produce, but that will be produced by you as an affirmative defense.

MR. LIVINGSTON: In view of the facts that some other remarks prior off the record, it is safe to say that [fol. 1386] the defendants were not forced, and we had the discussion, and these seem to be the two most orderly ways to proceed. They have been offered one of the two alternatives.

THE COURT: That is correct. I would like to ascertain before we actually get into the proceedings a determination as to which of the two methods suggested by the Court the defendants wish to avail themselves.

MR. LIVINGSTON: Defendant Langnes has no preference, and will abide by the ruling of the Court.

MR. CODISPOTI: Is it my understand that each individual in this case has a choice in the matter, and that one—

THE COURT: No. We will adopt as an operating procedure either one of the two methods. We are not going to break it up into two different methods. That will create a chaos.

MR. CODISPOTI: That is what I am trying to find out, Your Honor.

[fol. 1387] MR. MAYBERRY: Defendant Mayberry and defendant Codispoti are in agreement of accepting the first suggestion presented by Your Honor.

THE COURT: Very well. That is that a witness will be called and he will give testimony on behalf of Langnes first for whatever reasons he may wish to call him, and you may follow through as second in the order of presentation and develop from that same witness those matters of defense which you wish to offer and put into evidence, and the same thing for Mr. Codispoti, that he will then follow up with the witness. In that way we can get each witness giving testimony for and on behalf of each one of the defendants in turn so that when we are through with that witness he may be excused.

MR. MAYBERRY: Yes.

MR. SARRAF: Once they are through and leave the stand they won't get back or be called back again?

THE COURT: Normally they will not be called back [fol. 1388] unless there is some matter that may arise in rebuttal or surrebuttal. We are not foreclosing that. Normally the witness would be as in any other case, be excused at the termination of that.

MR. SARRAF: After the three defendants—the three defendants are going to examine and cross-examine the same time the witness is on the stand?

MR. MAYBERRY: Your Honor, if there is something that would be brought out by the Commonwealth on rebuttal, if the Commonwealth does use rebuttal, will we be able to recall a particular witness on surrebuttal?

THE COURT: Absolutely. You have a right of surrebuttal, and you will have the right to call whatever witnesses to establish whatever you wish to establish in surrebuttal. When we talk about rebuttal and surrebuttal, however, let me put it straight on the record now, it is the refutation of a Commonwealth witness that has [fol. 1389] stated a certain fact. You do not call a man for rebuttal to rehash the case. In other words, the rebuttal and surrebuttal are limited to pinpoint testimony saying yes it is so or not so, period. That is it. It has a very limited purpose. Do you understand that?

MR. MAYBERRY: Yes, Your Honor.

THE COURT: All right. Very well then we will proceed.

MR. MAYBERRY: One other matter, Your Honor, that I have been wondering about. May the defendants testify in their own behalf and then testify in behalf of the other defendant, or be called as a witness by the other defendant?

THE COURT: Absolutely. We will permit the right of the three defendants to be called on behalf of one or the other defendant to the extent that it is material to the particular defense involved.

Of course, during the course of the testimony, assuming [fol. 1390] now that you do take the stand, and I am saying to you, also, you do not have to take the stand, but if you do take the stand, and if you have covered on testifying on your behalf that it again would be repetitious simply because one or the other defendant would

be called by another, we will not permit that. Any testimony that may be material to the defense or one or the other, or all three of you, that has not been developed, of course, may be developed, and we will allow that.

* * * *

[fol. 1595] BY MR. MAYBERRY:

Q At the time you made that statement, Mr. DeMino, I understand you were waiting to go outside on a parole, is that correct?

[fol. 1596] A Yes.

THE COURT: You answered that. Don't ask it three times. He answered that.

BY MR. MAYBERRY:

Q How many years had you been in prison at that time?

A Well, close to 15.

Q 15 years straight?

A No.

Q Mr. DeMino, when you made that statement were you acting in a purely voluntary manner?

A Well, I would say I was, but in my mind I was just hoping that maybe I would get out faster on a parole if I made the statement.

Q Did you feel in your mind that if you did not make that statement your parole would be jeopardized?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q Now, Mr. DeMino, in that statement you made there you named the defendant Richard Mayberry as one of the parties participating in the events at the hospital on the night of June 27, 1965. Now, in view of the fact of your previous testimony given here today in this courtroom I ask you now, sir, do you still believe that the [fol. 1597] person you observed that night and the person you indicated in that statement as being a participant,

do you still believe that Richard Mayberry is the one or was the person you seen that night?

A No, I don't.

Q Now, at the time you made that statement, Mr. DeMino, did you feel in your mind that there was a pressure on you to make that statement?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q Is the testimony you have given here in this courtroom in this case the truthful narration of the events as you witnessed them that night?

A As far as my knowledge, yes.

Q Other than the oath that you have taken prior to taking the witness stand to tell the truth, do you feel bound by any other obligation to testify in this matter?

A No. Like I explained about this, this is simply more of a lie that I had heard everybody else mention names down there, and I went along with the name I heard and made the statement and wanting to get out on parole, like I explained.

[fol. 1598] Q Did anyone threaten you in any way to testify in this case for the defendants?

A No. I haven't seen them even until I was brought to court.

Q Directing your attention to the night of June 27, 1965 I would like to ask you, do you recall at the prison hospital when you first seen the defendant Mayberry?

A In the lavatory.

Q Do you recall approximately what time that was?

A No, I couldn't exactly say the time.

Q Could you say whether or not it was after suppertime?

A Yes, it was after suppertime.

Q Now, would you be able to say whether or not it was after 6:00 p.m. in the evening?

A No, I couldn't say for sure.

Q At the time you seen the defendant Mayberry in the lavatory of the general ward at the prison hospital, do you recall hearing gunshots or explosions prior to that time?

A That was a lot of commotion out there, and that is when everybody ran toward the lavatory.

THE COURT: Prior to what time? Prior to your—

MR. MAYBERRY: Prior to the first time he seen me [fol. 1599] in the prison lavatory in the hospital.

THE COURT: Do you understand the question?

A Yes, sir.

THE COURT: You may give your answer.

A Well, there was a commotion outside that sounded like shots, and four or five fellows ran toward the lavatory, and that is the first time I seen Mr. Mayberry.

BY MR. MAYBERRY:

Q Do you recall the State police firing into the general ward of the hospital that night?

A No, but I heard the shot, and I heard the window break. I was behind the lavatory at the time, and I couldn't see too well out into the ward.

Q Do you recall inmate patients in the general ward running into the lavatory to take cover from gunfire?

A Yes, that is what I recall.

Q Would it be a correct summary of your testimony in defense of Mr. Langnes to say that you were in the prison hospital on the night of June 27, 1965, and you observed a convict with red hair and another person described by the name or nickname of Butch Rizzo in the lavatory at the same time?

A Yes.

[fol. 1600] Q And that Langnes then entered?

A Yes.

Q And that an argument ensued between Langnes and this red haired prisoner?

MR. MEDONIS: Objection.

THE COURT: What is the purpose of this?

MR. MAYBERRY: It is the point when he seen me.

THE COURT: Ask the proper questions. You don't

have to ask questions as far as a correct summary as it relates to Langnes. Relate them to you.

MR. MAYBERRY: I am trying to develop when I first appeared prior to this—

THE COURT: Then develop those and forget what Langnes—forget the correct summary insofar as Langnes is concerned.

MR. MAYBERRY: Well, Your Honor, to make it clearer, this was in an extended examination by defendant Langnes, and to make it more clear I want to show [fol. 1601] when I was first seen in this location.

THE COURT: I think it is very clear when you were according to the testimony of this witness. You appeared the second time when Langnes went into the lavatory. That is what has been testified to. It is very clear. Now proceed with your questioning. Let's not draw it out on unnecessary details.

(Exceptions noted.)

BY MR. MAYBERRY:

Q Now, when you first seen Mr. Richard Mayberry in the lavatory of the general ward at the prison hospital, did you notice if I was wearing prison clothes at the time?

A Yes, brown clothes on, yes.

Q Now, at any time while you observed me in this location did you notice whether or not I had in my possession the exhibits that you previously looked at?

A No, you didn't have anything on you.

Q I am referring to the zip guns, the bombs—

A I didn't see anything in your possession when you came into the lavatory.

[fol. 1602] Q Can you recall approximately how long we were in this lavatory?

A I would say about a half hour.

Q Do you recall whether or not you seen the defendant Richard Mayberry in the presence of Officer Walz on the night of June 27, 1965 at the prison hospital?

A No. The first time I seen you was when you entered the lavatory.

Q Did you see Officer Walz in the prison hospital that night?

A Yes, I seen him when I first went into the lavatory sitting at the desk.

Q Do you recall if at the time you observed him whether or not he was tied up?

A I didn't pay that much attention to him because I was just going to the lavatory, and it was like another officer sitting there. You see a lot of officers sitting there, you know.

Q Did you notice when you observed Mr. Walz if he appeared to be in a normal condition?

MR. MEDONIS: Objection.

BY MR. MAYBERRY:

Q By that I mean, did he appear like—

THE COURT: Ask him how he appeared. I am not [fol.1603] sure at this stage whether you are calling this witness in your own behalf or you are cross-examining this witness.

MR. MAYBERRY: I am calling this witness in my own behalf, Your Honor.

THE COURT: All right. Of course, let's eliminate the leading questions.

MR. MEDONIS: I didn't hear the district attorney object to leading questions on my part, Your Honor.

THE COURT: We have been permitting a lot to go into the record. Go on.

BY MR. MAYBERRY:

Q Now, Mr. DeMino, did you observe Officer Ferrara on the night of June 27, 1965?

THE COURT: He answered that.

MR. MAYBERRY: I haven't asked him the question before this time.

THE COURT: Are you going to get a different answer? We will let you ask it, but I thought we understood that you were not going to repeat the same information [fol.1604] elicited by another defendant.

MR. MAYBERRY: I am not trying to. Insofar as it relates to me, though, I feel it is critical.

THE COURT: We will have him state again.

BY MR. MAYBERRY:

Q Did you ever see me in the presence of Officer Ferrara?

A No, I didn't.

Q At the time you observed me in the prison hospital on the night of June 27, do you know of your own knowledge whether or not I was making any attempt to escape from the prison?

MR. MEDONIS: Objection.

THE COURT: We will let him answer the question, because it is whether he knows of his own knowledge.

(Exception noted.)

A No, I don't.

BY MR. MAYBERRY:

Q Could you say approximately how far the prison hospital is from the wall of the prison?

A About 20 feet, I would say.

Q Would it be possible for a human to jump from [fol. 1605] the hospital on to the wall?

A No.

MR. MEDONIS: Objection. Wait a minute.

THE COURT: We will sustain that.

(Exception noted.)

BY MR. MAYBERRY:

Q Now, at the time you were in this lavatory at the prison hospital, and while you observed the defendant Mayberry in this lavatory, do you recall any tear gas bombs being thrown into the lavatory?

A Yes, there was one thrown at the lavatory door there.

Q And what happened to this tear gas bomb that was thrown in there?

A A lot of smoke was coming—

THE COURT: We will not permit the witness to rehash what he testified to before. Go on to something else.

BY MR. MAYBERRY:

Q What was done with this bomb that was thrown in there?

A You reached up and picked it up and threw it back out the window.

Q Now, before I threw this tear gas bomb back out [fol. 1606] of the lavatory, did you notice whether or not my hands were injured at the time?

A I didn't notice anything about you.

Q Did you notice whether or not after I threw this bomb out if I was injured in any way?

A No, I couldn't say if you was or not. Are you referring to the tear gas bomb?

Q Yes.

A Yes. I know you was holding your hand under the sink after you threw the bomb out. I don't know if you hurt your hand or not. I know you were holding your hand out and wrapped it in a towel.

Q Now, this tear gas bomb that you seen me throw out of the lavatory, are you sure that it came from outside the lavatory into the lavatory?

A It bounced right at the door of the lavatory door. You couldn't. It sticks up 6 to 8 inches, and somebody was hollering there was an old man there 82 years old where the bomb hit, and this man was a heart patient at the time, and hollered to get that bomb out of there, and you reached and threw it back out.

Q I ask you, Mr. DeMino, are you positive that this bomb was thrown from outside the lavatory into the lavatory [fol. 1607] and not from inside the lavatory first?

MR. MEDONIS: I understand Mr. Mayberry's position now that this is direct, and I think he is leading.

THE COURT: Obviously he has been leading. I was waiting for an objection, but we will let him testify unless there is an objection.

MR. MEDONIS: I raise the objection now, Judge.

THE COURT: We will sustain the objection.

(Exception noted.)

BY MR. MAYBERRY:

Q Did you see where this tear gas bomb came from?

A It came from outside the hospital corridor there. That is the only place it could have come from. Nobody—

THE COURT: Did you see where it came from?

A From outside the hospital ward.

THE COURT: You saw it?

A I seen it land there.

[fol. 1608] BY MR. MAYBERRY:

Q Would you remember—I withdraw that—

THE COURT: We will take a ten minute recess at this time, ladies and gentlemen.

(Thereupon a recess was had at 10:40 a.m.)

(After recess at 11:00 a.m.)

HAROLD DeMINO, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Cont'd)

BY MR. MAYBERRY:

Q Now, Mr. DeMino, after you seen the defendant Mayberry throw this tear gas bomb back out of the lavatory, what did you next observe?

A Well, there was a lot of hollering and people yelling out there, and a lot more gas going around, thrown in, and everybody got in a panic and started to rushing out the doors. I heard a lot of windows broke out for air to get in, and everybody was rushing to get out.

Q Do you recall seeing the defendant Mayberry when he left the general ward that night?

[fol. 1609] MR. MEDONIS: Wait a minute, objection.

THE COURT: Let him answer that question.

A Yes, I seen you come out with everybody else, and ran out of the bathroom.

THE COURT: That is not the question.

A Yes.

THE COURT: Repeat the question.

(Last question read by reporter.)

A Yes, I did.

MR. MAYBERRY: I would ask Your Honor not to badger the witness. He is trying to—

THE COURT: You let me handle my share of it, and you handle yours.

MR. MAYBERRY: I am trying to do that, Your Honor.

THE COURT: All right. Don't try to be judge at the same time. Just handle your case. I will be the judge.

BY MR. MAYBERRY:

Q Do you recall how many patients were in the general ward on the night of June 27, 1965 when these tear gas bombs were thrown in?

[fol. 1610] MR. MEDONIS: Objection.

THE COURT: Sustained. He answered that once before. We are not going to have these repetitions and prolonging this thing. I want this over with.

(Exception noted.)

BY MR. MAYBERRY:

Q Do you recall, Mr. DeMino, the names of any of these patients that were in that general ward that night when the tear gas and gunshots were fired in there?

A A few names I recall.

Q Would you name them off for me now?

A The nickname I heard was in the lavatory, and that was Flat-top.

MR. MEDONIS: Objection.

THE COURT: We will let him go ahead.

(Exception noted.)

A The other name was Butch Rizzo, and Red was there, and one of the other nurses that I know was up there, Larry Magnus.

BY MR. MAYBERRY:

Q Now, this name Butch Rizzo, do you know if this is the true name of the person?

A No, I don't know the person at all. I know him [fol. 1611] by the nickname and to see him. I am not acquainted with him personally, just know him to see him.

Q Could you describe this Butch Rizzo?

A Well, he is about 5 foot 9, pretty well built, short wiry hair, ruddy complexion.

Q What color hair?

A Red, sort of reddish—reddish brownish.

Q Now, Mr. DeMino, when you left the hospital general ward on the second floor on the night of June 27 did you observe the police officers who were present at that time?

A No, I didn't observe them, but I know there was a lot of police there at the time.

Q Did you see any persons dressed in the uniform of police or prison guards outside the general ward that night?

A Yes, as we came out the general ward, yes, there was prison guards out there and some State troopers.

Q Did you observe the defendant Mayberry being taken into custody that night?

A No. As you came down the steps with me they grabbed you going down the steps, and I didn't know where they took you or anything, but I know they hussled you down the steps in a rough way, and I didn't see you no more.

Q Now, at the time you seen me being taken down [fol. 1612] the steps from the second floor to the first floor of the hospital can you say approximately how many police were escorting me at that time?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q Did you see any police escorting me at that time?

A I seen them grabbing you as you went down the steps. They had about seven or eight. They weren't police. There were prison guards of the prison lining the steps watching everybody who came down the steps.

Q Now, will you describe the manner in which I was taken to the first floor from the second floor in the prison hospital?

MR. MEDONIS: Objection.

THE COURT: Did you see the defendant Mayberry taken from the second floor to the first floor all the way?

A I seen him taken down the steps from the first flat landing of the steps.

THE COURT: Where were you at the time?

A I was coming down right behind him.

THE COURT: You saw him then?

A Yes.

[fol. 1613] THE COURT: We will let him answer the question.

(Exception noted.)

A I seen when they grabbed you at the second flight of the steps, and they were pulling on you and dragging you down the steps, and I was choking on the gas myself at the time, and I passed out at the bottom of the steps and was carried out into the yard.

BY MR. MAYBERRY:

Q Did you notice whether or not there was any fighting going on as I was being taken down the steps?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q Did you notice whether or not the officers that were escorting me had clubs in their hands?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q I would like you to describe specifically and in detail [fol. 1614] the manner in which I was taken from the ward to the first floor of the hospital.

MR. MEDONIS: Objection.

THE COURT: Let him answer that.

(Exception noted.)

A Well, you ran out of the—we all didn't run, but was hustled, moved fast out of the ward to get down to the steps into some air, and as we were coming down the steps the guards were lined up on the steps. At that time all the guards had clubs in their hands because of the attempted prison breach. They were excited and everybody had clubs and guns there. I was pretty well choking with the gas, and you were ahead of me, and I seen them grab you and push and throw you down the steps, and everybody was pushing and shoving going down the steps. I don't know where they took you, and I passed out unconscious at the bottom of the steps and was taken out and revived in the air.

BY MR. MAYBERRY:

Q Did you notice any State police present at that time?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

[fol. 1615] BY MR. MAYBERRY:

Q Do you know Trooper Spong of the Pennsylvania State Police?

A No, I don't know him by that name.

Q Did you observe the defendant Mayberry fighting with the State police that night at any time?

MR. MEDONIS: Objection.

THE COURT: Sustained. He already covered what he observed. Now, let's go on.

(Exception noted.)

BY MR. MAYBERRY:

Q Did you notice whether or not the defendant Mayberry was resisting arrest or resisting the officers that were escorting him to the first floor?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q How was the defendant Mayberry acting at the time you observed him being taken down to the first floor of the prison hospital?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

[fol. 1616] MR. MAYBERRY: Your Honor, the State witness, Trooper Spong, has testified that I fought him to the first floor.

THE COURT: No speeches. I have ruled.

MR. MAYBERRY: I have a right to impeach.

THE COURT: We will not hear any speeches from you, Mr. Mayberry. I ruled on the question.

MR. MAYBERRY: There are two sides to this controversy, and I wish to present mine. May I?

THE COURT: In the event that it is proper we will give you every latitude to do so. To the extent that it is improper we will stop you.

MR. MAYBERRY: Are you refusing me to present witnesses who will contradict the Commonwealth witnesses, Your Honor.

THE COURT: No, I am not. I told you that repeat- [fol. 1617] edly. We are not going on with this. Go on with your questioning.

MR. MAYBERRY: May I question this witness, Your Honor, concerning the contradiction between the trooper—

THE COURT: Go on and ask your questions, Mr. Mayberry.

BY MR. MAYBERRY:

Q At the time, Mr. DeMino, you observed the defendant Mayberry being taken to the first floor of the prison hospital, did you observe if he had anything in his hands at the time?

A No, I don't think he did.

Q Do you recall, Mr. DeMino, at the time I was being taken to the first floor of the hospital whether or not I was fighting with any State troopers?

MR. MEDONIS: Objection.

THE COURT: We sustained that for the third time now.

(Exception noted.)

MR. MAYBERRY: On what grounds?

THE COURT: The objection is sustained. Go on.

[fol. 1618] MR. MAYBERRY: I thought the trial was to develop the truth of the matter, Your Honor. I would like to know how I am going to be able to impeach the Commonwealth witnesses to show the contradiction if I can't ask my witness what he observed on the stairway leading to the first floor that night.

THE COURT: We covered that matter. Ask your questions.

BY MR. MAYBERRY:

Q Now, these two persons you identified as Butch Rizzo and the convict in the white clothes wearing red hair, these two separate individuals, did you ever hear them give any information to the prison authorities concerning the defendant Mayberry?

MR. MEDONIS: Objection.

THE COURT: We will allow the question.

A Yes. Like everybody else—like I told you before, at the time they were in the hospital everybody had given a statement as to what happened.

BY MR. MAYBERRY:

Q Will you describe, Mr. DeMino, the time and location when you observed these two individuals speaking to prison authorities?

[fol. 1619] THE COURT: He didn't say he spoke to them. He said they gave statements.

BY MR. MAYBERRY:

Q Were these statements given by this Butch Rizzo and this red haired convict spoken statements, verbal statements?

A Well, they were verbal. I don't know if they were written or not.

THE COURT: Were you present, sir?

A I was at the prison hospital present when they talked to all patients up there.

THE COURT: Were you present when these people were supposed to have talked to the authorities?

A Yes, they were all present.

THE COURT: Were you present?

A At the hospital, yes, sir.

MR. MAYBERRY: For the record I object to Your Honor repeatedly taking examination of the witness out of the hands of the defendant and interfering with the development of—

THE COURT: You have the objection on the record. Now let's go on.

[fol. 1620] BY MR. MAYBERRY:

Q Now, Mr. DeMino, do you know of your own knowledge whether or not these two convicts, Butch Rizzo and the redheaded person, implicated Richard Mayberry as a participant in that incident of June 27, 1965?

A Yes. When they spoke to the prison officials your name was mentioned.

Q Did you hear these two convicts make any incriminating statement against the defendant Mayberry?

MR. MEDONIS: Objection.

MR. MAYBERRY: This is not for the truth or falsity, but merely to prove it was said.

THE COURT: I take your question to mean did you hear any statements made by these two inmates.

MR. MAYBERRY: Against the defendant Mayberry.

THE COURT: Yes, you asked that before. Did you

hear any statements given by these two inmates against Mr. Mayberry?

A No, I heard the verbal conversation with the prison [fol. 1621] officials, I mean, at the time, but I mean, I didn't see any written statements they made or anything.

BY MR. MAYBERRY:

Q I am referring to statements, Mr. DeMino, either verbal—

A Yes, verbal.

Q —or written, either way.

A Verbal.

Q Now, Mr. DeMino, do you know of your own knowledge whether or not these two convicts were used by the prison authorities as informers?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q Do you know of your own knowledge, Mr. DeMino, if the prison authorities acted upon the information given by these two convicts against the defendant Mayberry?

MR. MEDONIS: Objection.

THE COURT: We will allow that.

(Exception noted.)

THE COURT: Do you know of your own knowledge?

BY MR. MAYBERRY:

Q Do you know of your own knowledge if the prison [fol. 1622] authorities took any action such as confining the defendant, punishing—

THE COURT: Wait a minute.

BY MR. MAYBERRY:

Q Do you know of your own knowledge whether or not the prison authorities took any action as a result of the information given to them by the informers?

A I think they took the action—

THE COURT: Not what you think. Do you know as a result of the conversations whether or not the prison authorities took any action?

A I would say to my knowledge, yes.

BY MR. MAYBERRY:

Q And would you describe, Mr. DeMino, the nature of this action taken by the prison authorities, what it consisted of, if you know?

MR. MEDONIS: Wait a minute. I think this is objectionable.

THE COURT: Well, of course, it presupposes that this witness had to be present. If he was not, it is objectionable. Were you present there after?

A No, I was just present when they were—

[fol. 1623] THE COURT: We sustain the objection.

(Exception noted.)

BY MR. MAYBERRY:

Q Do you know, Mr. DeMino, where the defendant was confined following this incident?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q Do you know, Mr. DeMino, if the prison authorities punished the defendant Mayberry because of information they received from these informers?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q Do you know of your own knowledge, Mr. DeMino, whether or not—I withdraw that question—I would like to ask you, Mr. DeMino, during the ten minute recess has anyone spoken to you about your testimony in this case?

A No, they haven't.

Q Now, Mr. DeMino, I would like to ask you if you know of your own knowledge whether or not there is a [fol. 1624] deep and well settled hatred on the part of the prison officials for the defendant Mayberry?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q Do you know of your own knowledge, Mr. DeMino, if at the time of June 27, 1965 there existed a deep and well settled hatred on the part of the prison officials for the defendant Mayberry?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q Do you know of your own knowledge, Mr. DeMino, whether or not Richard Mayberry was framed on these charges by the prison authorities?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

MR. MAYBERRY: Do I have a continual exception for every time you sustain an objection by the district [fol. 1625] attorney, Your Honor?

THE COURT: Yes. I have explained that to you before, Mr. Mayberry.

MR. MAYBERRY: That wasn't my question, Your Honor. I asked did I have an exception.

THE COURT: Go on.

BY MR. MAYBERRY:

Q Do you know of your own knowledge, Mr. DeMino, whether or not the prison authorities had Richard J. Mayberry entrapped into this crime?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

MR. MAYBERRY: Your Honor, do I understand you are refusing me to produce the defense of entrapment?

THE COURT: No, I am not refusing you. I just sustained an objection to a question which you have asked.

[fol. 1626] MR. MAYBERRY: I would like to consult with my legal adviser Mr. Sarraf.

BY MR. MAYBERRY:

Q Now, Mr. DeMino, you have stated that you observed this Butch Rizzo and this redheaded inmate talking to the prison guards or officials. Did you hear the words that were spoken between these informers and the prison guards or officials?

A No, I didn't hear the conversation.

MR. MEDONIS: Objection.

THE COURT: He answered the question that he did not hear the conversation.

BY MR. MAYBERRY:

Q Do you know, Mr. DeMino, of any hatred on the part of the prison authorities toward the defendant Mayberry?

MR. MEDONIS: Objection.

THE COURT: We have already sustained that objection.

(Exception noted.)

BY MR. MAYBERRY:

Q Do you know, Mr. DeMino, of any antagonism on the part of the prison authorities toward the defendant Mayberry?

MR. MEDONIS: Objection.

THE COURT: Sustained.

[fol. 1627] (Exception noted.)

BY MR. MAYBERRY:

Q Have you ever seen any hatred and antagonism or

hostility displayed toward the defendant Mayberry by the prison authorities?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

MR. MAYBERRY: Now, I'm going to produce my defense in this case and not be railroaded into any life sentence by any dirty, tyrannical old dog like yourself.

THE COURT: You may proceed with your questioning, Mr. Mayberry.

* * * *

[fol. 1792] BY MR. MAYBERRY:

Q And is the area where you observed the three defendants open and freely accessible to any prisoner in that penitentiary?

MR. MEDONIS: Objection.

THE COURT: We will let him answer that.

(Exception noted.)

A No.

BY MR. MAYBERRY:

Q No? I refer to the area, the handball court area. Is that area open to any prisoner in the penitentiary who cares to go to that area?

MR. MEDONIS: He answered the question.

MR. MAYBERRY: He hasn't understood the area, obviously.

BY MR. MAYBERRY:

Q I ask you, Mr. Nardi, is that area, the handball court, is it open to any prisoner who wants to play handball, who cares to go to that area to play handball?

A Yes.

Q Did you understand the prior question when I asked you if it was freely open and accessible area?

THE COURT: He answered your question. Let's go on.

[fol. 1793] MR. MAYBERRY: I am asking him now if he understands—

THE COURT: He answered it. Now, let's go on.

MR. MAYBERRY: I ask Your Honor to keep your mouth shut while I'm questioning my own witness. Will you do that for me?

THE COURT: I wish you would do the same. Proceed with your questioning.

* * *

[fol. 1834]

November 29, 1966
Pittsburgh, Pennsylvania

MR. MAYBERRY: Defendant Mayberry would like to put something on the record before we proceed. At the present time I am being held incommunicado at the prison in an underground dungeon without clothing, bed-[fol. 1835] ding, or nothing. I can't write any letters, petitions, and I am not allowed to receive any visits. This is interfering with my right to a fair trial because I am unable to prepare my legal papers due to the fact that the prison authorities have taken them away from me and not letting me have them except when I come to the court in the morning.

Now, I am being unduly harassed by being held continually in this underground dungeon; in jeopardy of my life by high pressure steam and water lines. I have no facilities for writing, denied my legal papers, and I have not been given any outdoor exercises. This is nothing but a way of harassing and distracting me from my defense to these serious charges and in preparing any interrogation on the charges on trial.

THE COURT: You made that statement yesterday.

MR. MAYBERRY: You said this was a court of law. [fol. 1836] I'm entitled to a fair trial or I wouldn't bring it up.

THE COURT: You have been here during the day and we usually adjourn court around 4:00 o'clock, and then you are returned to the State Correctional Institution, and you are brought back in the morning—

MR. MAYBERRY: Without my papers, though. When I am returned they take my papers and put me in a barestone underground cellar.

THE COURT: That is your statement and a collateral issue we are not going into. Proceed.

MR. LANGNES: I want to put something on the record before we proceed, if I may.

THE COURT: You may.

MR. LANGNES: Going yesterday, going back to the Western Penitentiary I asked the sergeant on the Home Block for my legal papers, and for my regular privileges, [fol. 1837] and he told me that Mr. Maroney gave him direct orders that I don't get nothing, and he doesn't give a damn whether or not I have a fair trial or not. I want that on the record. I want to subpoena Sergeant Peterson of the Home Block, and I want to subpoena Mr. Maroney for—

THE COURT: You already subpoenaed Superintendent Maroney as your witness, so he will be available for you at the proper time.

MR. LANGNES: Can I subpoena Sergeant Peterson?

THE COURT: We are not going into any collateral issues here. What may or may not be said by others has nothing to do with this. The question is whether or not a proper and fair trial is given to you in this court. You have a right to object to anything that you think is improper as to matters that occur in court. As to what [fol. 1838] happens after you leave the courtroom and then taken back to the prison is a matter that has to be taken up with the prison officials.

MR. MAYBERRY: But when it interferes with my right to a fair trial—

THE COURT: I don't see that it does.

MR. MAYBERRY: I can't prepare my legal papers.

MR. LIVINGSTON: I have been asked by defendant Langnes to make a motion at this time in which the Court is being asked to direct the prison authorities to allow these defendants to at least have their legal documents wherever they are confined. I think they are entitled to that and ask the Court for it.

MR. MAYBERRY: I have a Federal court order ordering the prison authorities not to take my legal papers away from me no matter where I am, and they are in [fol. 1839] direct violation with the Federal court order.

THE COURT: I suggest you take it up with the Federal court.

MR. MAYBERRY: You're a judge first. What are you working for? The prison authorities, you bum?

MR. LIVINGSTON: I have a motion pending before Your Honor.

THE COURT: I would suggest—

MR. MAYBERRY: Go to hell. I don't give a good God damn what you suggest, you stumbling dog.

MR. LIVINGSTON: I have a motion pending before Your Honor in reference to Langnes being permitted to have access to legal papers out of the courtroom.

MR. CODISPOTI: Defendant Dominick Codispoti—

MR. LANGNES: Let him—

[fol. 1840] THE COURT: I am not going to interfere in any matters—with the rules and regulations of the prison authorities.

MR. LANGNES: Let me state this—

MR. LIVINGSTON: Your Honor, is the motion then denied?

THE COURT: The motion is refused.

MR. LANGNES: Let me state this, Your Honor: If I can't get my rights legally, then I warn you that I will get my rights illegally, or any way I can. If I have to blow your head off, that's exactly what I'll do. I don't give a damn if its on the record or not. If I got to use force, I will. That's what the hell I'm going to do.

THE COURT: That's the end of this.

MR. CODISPOTI: Defendant Dominick Codispoti in this case is facing life imprisonment and states for the [fol. 1841] record that since the commencement of this trial he has been able to review his case each evening with the help of his legal papers. Now, because of the incident that occurred over the past weekend he has been deprived of his right to review the entire day's proceedings and lay out his strategic plans for the following

day because the prison officials have been confiscating his legal material.

In view of that fact he asks this Court to issue an order restraining the prison officials from interfering with his right to a fair trial in that they are depriving him of his legal papers and because of this he is unable to present a proper defense, and this is in direct violation of due process of law as guaranteed by the 14th Amendment.

I want this placed on the record, and I want the jury in this case to realize that if there are any outbursts by the defendant it is only because the defendants in this [fol. 1842] case will not sit still and be kowtowed and be railroaded into a life imprisonment.

MR. MAYBERRY: You started all this bullshit in the beginning.

THE COURT: You keep quiet.

MR. MAYBERRY: Wait a minute.

THE COURT: You keep quiet.

MR. MAYBERRY: I am my own counsel.

THE COURT: You keep quiet.

MR. MAYBERRY: Are you going to gag me?

THE COURT: Take these prisoners out of here. We will take a ten minute recess, members of the jury.

(Thereupon court 9:50 a.m.)

(During recess before the jury entered the courtroom.)

THE COURT: While counsel are present in court I [fol. 1843] want the record to show that I have spoken to Superintendent Maroney, and while there may have been just grounds for taking the papers from these prisoners yesterday evening, I have instructed Superintendent Maroney to turn over those papers to them at the end of the day so that they may have them at the State Correctional Institution. He is to take their receipts showing that these papers have been turned over to them, and they will be checked in the following morning. That is all I want to say at this time.

* * * *

[fol. 2192] THE COURT: You may proceed with the witness, Mr. Mayberry.

MR. MAYBERRY: I don't want to cross-examine the witness, but I would like to call him as my own witness.

[fol. 2193] THE COURT: We will permit you to do that at a later time.

[fol. 2200] THE COURT: Are you cross-examining now?

MR. MAYBERRY: Well, I didn't know what you would call this, but I have one question concerning—

THE COURT: You can call this witness in your own behalf if not for cross-examination.

BY MR. LIVINGSTON:

Q I have one question, Mr. Langnes. You have heard [fol. 2201] the Commonwealth's witnesses testify about a prison breach?

A Yes, sir.

Q You were here in court when they testified?

A Yes, sir.

Q Did you take part in any way in that prison breach?

A No, sir.

MR. CODISPOTI: I have one question I would like to ask.

THE COURT: Are you going to cross-examine this witness?

MR. CODISPOTI: Strike that, no.

THE COURT: You may step down.

MR. MAYBERRY: I would call defendant Langnes as my witness now, as a defense witness in my behalf.

THE COURT: We will proceed to determine what Mr. Langnes wants to do because we set this up that when it comes your turn outside of any witness you may wish to call, you may call Mr. Langnes at that time.

[fol. 2202] MR. LANGNES: I am in agreement.

MR. MAYBERRY: On defense I reserve the orderly presentation of my defense to call him while he is available to take the stand, and not now when he was on the stand

in his own behalf. I didn't cross-examine, but I want to bring for the—

THE COURT: We will permit it at the proper time. You may take your seat. Call your next witness, Mr. Langnes.

* * * *

[fol. 2218] MR. MAYBERRY: Defendant Mayberry has something he would like to find out from the Court. You have agreed—you have given us two alternatives in this case, to call our witnesses one by one as to each of our defenses, and give each defendant a chance to cross-examine those witnesses, and then you have given us another alternative that we put one witness on the stand and each one of us will question him as to our defense while still on the stand. Now when defendant Langnes took the stand in his own behalf and I wanted to question him as to defense you refused me at that time to use Mr. Langnes as a defense witness.

[fol. 2219] THE COURT: That is correct.

MR. MAYBERRY: This is contrary to your prior proposal.

THE COURT: No, it is not. It is your idea it is contrary, but actually it is not, because before you got into your defense outside of the common witnesses we will permit Mr. Langnes to finish up. Any other witnesses you may call on behalf of yourself. You will be permitted to do so, so there is no inconsistency there. Let's go on. Take the stand, Mr. Codispoti.

MR. MAYBERRY: Do I understand this, Judge Piok, that any other witnesses that defendant Langnes makes use of, may I also use that as a defense witness in my case?

THE COURT: That is consistent with what we have been doing.

MR. MAYBERRY: Why wasn't I permitted—

[fol. 2220] THE COURT: Because Mr. Langnes was not finished with his defense.

MR. MAYBERRY: But we have been using the same witnesses all along here.

THE COURT: Right. You don't understand, do you?

MR. MAYBERRY: No.

THE COURT: All right. We are going on as we started. Take the stand, Mr. Codispoti.

MR. MAYBERRY: I would like to know when I may be permitted to call Mr. Langnes as my witness.

THE COURT: We will let you know.

DOMINICK JOHN CODISPOTI, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Cont'd)

BY MR. LANGNES:

Q Mr. Codispoti, concerning this conversation between [fol. 2221] you and the defendant Langnes, first of all, was anybody else present?

A I believe so.

Q Do you know who?

A I am not sure of the name. I do know the person by nickname.

MR. MAYBERRY: Are you going to have me wait until defendant Langnes is all through with his witnesses before I can present my defense?

THE COURT: I have answered that. Now let's stop this, and go on.

MR. MAYBERRY: No. I don't understand. I want to know how I will proceed.

THE COURT: We will permit this witness to testify. Proceed.

* * * *

[fol. 2264] MR. MAYBERRY: Wait a minute. Am I permitted to make use of Mr. Codispoti, to call Mr. Codispoti as a witness, or am I—

THE COURT: Do you want to cross-examine at this time?

MR. MAYBERRY: I was under the impression, Your Honor, I would be allowed to make use of the same witness as long as it related to my defense.

THE COURT: At the proper time.

MR. MAYBERRY: When you say the proper time, [fol. 2265] could you be a little more specific in that, Your Honor, so I can understand what you mean. If I—

THE COURT: As soon as Mr. Langnes is finished with his case you may call whatever witness—

MR. LANGNES: You wouldn't let me present my case, Your Honor. How the hell can I finish it?

MR. MAYBERRY: Your Honor, defendant Mayberry would like to understand this setup a little more clearly. I was under the impression from what Your Honor said earlier I would be allowed to make use of the same witness to present my defense as defendant Langnes makes use of the witness as soon as he is finished rather than have to call back the same witnesses that he has called. That is what you have told us earlier. Is that still the same understanding?

THE COURT: Yes. You may call Mr. Codispoti in [fol. 2266] your defense after Mr. Langnes has rested his side.

MR. MAYBERRY: As to the other defense—

THE COURT: You will be permitted to examine as heretofore.

Members of the jury, we will take a recess at this time.

* * *

[fol. 2275] THE COURT: Who is your next witness, Mr. Langnes?

MR. LANGNES: I call defendant Mayberry.

THE COURT: Before you call Mr. Mayberry has Kenneth Souders been brought up yet? We will have you call Kenneth Souders.

MR. LANGNES: I have specific reasons for calling Richard Mayberry first.

THE COURT: I know that. You stated you desired Kenneth Souders this morning, and accordingly it was directed that Kenneth Souders be produced.

MR. LANGNES: Since then I had to put other [fol. 2276] witnesses on.

THE COURT: Yes, because you called him. He is up here. Now he is here and we will call him.

MR. LANGNES: I don't care to call him at this time, Your Honor.

THE COURT: He will be called.

MR. LANGNES: Presently then I won't make use of him in that case.

THE COURT: You don't wish to call him?

MR. LANGNES: I want Mr. Mayberry first.

THE COURT: You do not wish to call him? He is now in court and available.

MR. LANGNES: Not at this time.

THE COURT: No. He has been called at your request to be brought up from the State Correctional Institution. You made that request this morning. He has now been produced, and he will be called.

[fol. 2277] MR. LANGNES: Kenneth Souders is not here at this time, and I have no intention of using him at this time, and I would like to call defendant Mayberry first.

THE COURT: All right. Let the authorities return Mr. Kenneth Souders back to the State Correctional Institution upon a showing that Kenneth Souders is not going to be used.

MR. LANGNES: Not at this time, Your Honor.

THE COURT: No, no. Are you going to use him? He is here.

MR. LANGNES: I'm going to use him, yes, sir.

THE COURT: Call him and we will put him on the stand.

MR. LANGNES: Your Honor, like I stated, I am going to use the defendant—

THE COURT: You are going to use him right now, sir. Now let's have no more.

[fol. 2278] RM. LANGNES: I will not use him at this time.

THE COURT: He will be called, and if you want to examine he will be examined. If not, we will excuse the witness.

KENNETH SOUDERS, a witness called on behalf of the defense, having been duly sworn according to law, testified as follows:

DIRECT EXAMINATION

MR. LANGNES: Your Honor, before I examine the witness I request a chance to talk to him for I haven't seen the witness for over a year. I want to recollect his memory, and I believe the prosecution has that right, and I believe I also should have that right. I ask for at least a half hour.

THE COURT: Now, you stated specifically the reason [fol. 2279] he was going to be called. Proceed with your examination.

MR. LANGNES: Your Honor, I refuse to be forced to question the witness before I have a chance to talk to him. I feel it is my right to talk to the witness to recollect if his memory so I will know—so that he will give truthful testimony.

THE COURT: Well, you apparently knew what he was going to testify to this morning because you spelled it out. Now, proceed with your examination.

MR. LANGNES: I am not the witness, Your Honor. I may know the facts but—

THE COURT: We will find out what he knows.

MR. MAYBERRY: Just one moment, Your Honor.

THE COURT: This is not your witness, Mr. Mayberry. Keep quiet.

MR. MAYBERRY: Oh, yes, he is my witness, too. He is my witness, also. Now, we are at the penitentiary and [fol. 2280] in seclusion. We can't talk to any of our witnesses prior to putting them on the stand like the District Attorney obviously has the opportunity, and as he obviously made use of the opportunity to talk to his witnesses. Now—

THE COURT: Now, I have ruled, Mr. Mayberry.

MR. MAYBERRY: I don't care what you ruled. That is unimportant. The fact is—

THE COURT: You will remain quiet, sir, and finish the examination of this witness.

Mr. MAYBERRY: No, I won't be quiet while you try to deny me the right to a fair trial. The only way I will be quiet is if you have me gagged. Now, if you want to do that, that is up to you; but in the meantime I am going to say what I have to say. Now, we have the right to speak to our witnesses prior to putting them on the [fol. 2281] stand. This is an accepted fact of law. It is nothing new or unusual. Now, you are going to try to force us to have our witness testify to facts that he has only a hazy recollection of that happened back in 1965. Now, I believe we have the right to confer with our witness prior to putting him on the stand.

THE COURT: Are you finished?

MR. MAYBERRY: I am finished.

THE COURT: Proceed with your examination.

MR. LANGNES: I want the record to show, Your Honor—I want the record to show that I am being forced to, one, use a witness out of turn merely because of the fact he is here; two, that I refuse—that I object to the whole proceedings of this hearing—this particular stage of the proceedings—

THE COURT: I am sure you do, Mr. Langnes. Proceed with your examination.

MR. LANGNES: —and three, I object to you conducting my defense.

MR. CODISPOTI: I object on the ground that I have heard from reliable sources that the prison officials have been tampering with this particular witness, and I feel that I should be given an opportunity as a co-defendant of Mr. Langnes to question this witness and to ascertain whether or not there is any substance to this rumor I have heard.

THE COURT: You will be given that opportunity.

MR. CODISPOTI: Not now, not in the presence of the entire jury, but for a mere five or ten minutes in seclusion.

THE COURT: Proceed with your examination Mr. Langnes.

BY MR. LANGNES:

Q Sir, what is your name?

A Kenneth Souders.

THE COURT: What was it?

[fol. 2283] A Kenneth Souders.

THE COURT: Keep your voice up.

MR. LANGNES: I object to the Judge badgering the witness. He is doing the best he can, Your Honor.

THE COURT: Go on.

MR. LANGNES: He doesn't need no hint.

BY MR. LANGNES:

Q Where do you reside, Kenney?

A Western State Penitentiary.

Q How old are you?

A 23.

Q Kenney, how long have you been in prison?

A Going on five years now.

Q When did you enter prison?

A April 5, 1962.

Q What are you in for?

A Homicide.

MR. LANGNES: (Indicating by throwing a pencil) Like I told you, you force this trial on me—you going to give me

[fol. 2284] (Page 2284 is blank due to misnumbering pages. Page 2283 is followed by page 2285)

JOHN H. GOODWORTH
Official Court Reporter

[fol. 2285] an illegal trial, I told you before what I was going to do to you, and I mean it. Now I refuse to go on with this trial if you are going to railroad me and badger my witnesses, force me to an unfair trial, that is exactly what I am going to do, punk. I'm going to blow your head off. You understand that?

THE COURT: Proceed with your questioning.

MR. LANGNES: You go to hell.

THE COURT: Any questions of this witness?

MR. CODISPOTI: The defendant Dominick Codispoti at this time—

THE COURT: Just a moment. You are out of order.

MR. LANGNES: You've been out of order ever since this trial started in the proceedings.

THE COURT: Any further questions of this witness, Mr. Langnes?

[fol. 2286] MR. LANGNES: Let me think about it. Give me time, Mister. I'll think about it. How's that, huh?

THE COURT: We will give you two minutes.

MR. LANGNES: I don't care what you give me. I'll give myself an hour.

THE COURT: Very well. You may proceed, Mr. Mayberry, since you want to ask questions of this witness.

MR. LANGNES: I'm not done examining the witness, Your Honor.

THE COURT: I will give you two minutes to ask your next question.

MR. CODISPOTI: Are you going to tell me my co-defendant is not crazy? You must be crazy to try me with him. How can you guarantee me a fair trial with a nut? The man is obviously sick. Anybody can see that.

THE COURT: Now you just keep quiet. I have [fol. 2287] heard enough from you.

MR. CODISPOTI: You haven't heard nothing.

MR. LANGNES: I ask Your Honor, do I get a fair trial?

THE COURT: Proceed with your questioning.

MR. LANGNES: I'm asking, do I get a fair trial?

THE COURT: Your two minutes are up, Mr. Langnes.

MR. LANGNES: The hell with the two minutes. I got life facing me and you're worried about two minutes.

MR. MAYBERRY: I have to ask for a severance because of all this.

THE COURT: Refused.

MR. MAYBERRY: Now, what do you want me to do? Just force me to sit here and be continually being [fol. 2288] prejudiced by all this here furor and all that is going on?

THE COURT: You have had your share of it, sir.

MR. MAYBERRY: That's not the point.

THE COURT: All right. Do you have any questions, Mr. Langnes, for the last time.

MR. LANGNES: I'm saying for the last time, go to hell.

THE COURT: Proceed with your questioning, Mr. Mayberry.

MR. LANGNES: I am not done examing the witness.

THE COURT: We will preclude you from questioning the witness. Proceed with your questioning.

MR. MAYBERRY: I will as soon as you get done talking to Mr. Langnes.

MR. LANGNES: Is it on the record that you refused me to examine my witness?

[fol. 2289] THE COURT: Everything is on the record.

BY MR. MAYBERRY:

Q Now, Mr. Souders, I want to advise you that you have a constitutional right to refuse to testify in this case, and if you would rather not, if you would care to take that right—

A I would like to take that right.

Q All right.

MR. MAYBERRY: The witness is excused as far as defendant Mayberry is concerned.

THE COURT: Do you have any questions, Mr. Codispoti?

MR. CODISPOTI: I have a statement to make in regards to this.

THE COURT: No, no statements. Do you have any questions of this witness?

MR. CODISPOTI: No, I do not intend to question the witness because he has been harassed by the prison officials.

THE COURT: You may be excused, sir.

* * * *

[fol. 2301] HERBERT F. LANGNES, a witness called in behalf of the defense, having been duly sworn previously, resumed the stand and testified as follows:

DIRECT EXAMINATION

[fol. 2304] BY MR. MAYBERRY:

Q Now, did you notice any guards present in the area at this time?

A There were guards there. I mean, they were in the yard.

Q Do you recall their names?

[fol. 2305] MR. MEDONIS: If the Court please, I might object at this time unless we know what specific time.

MR. MAYBERRY: I said approximately 2:00 o'clock in the afternoon, I believe.

THE COURT: Between 2:00 and 2:30. I take it that you are talking about the same time period.

MR. MEDONIS: The conversation between the inmates would be material, but I don't think it is material who the guards were.

THE COURT: He can state if there were any guards, but don't go into it too far, into that inquiry at this time.

BY MR. MAYBERRY:

Q Do you know who the guards were in the yard?

A No; by sight, not by name.

Q Mr. Langnes, after this do you know how the conversation terminated?

A All I know is there seemed to be some sort of an agreement.

THE COURT: No.

[fol. 2306] MR. MEDONIS: I object to that and I ask it be stricken.

THE COURT: The question is, do you know how the conversation terminated. I don't know what you mean by that, but we will let him answer that if he knows.

(Exception noted.)

MR. MAYBERRY: By that I mean—

THE COURT: No, no. You ask the question.

A What did you mean?

BY MR. MAYBERRY:

Q I meant—

MR. MEDONIS: Wait a minute.

BY MR. MAYBERRY:

Q —how did the conversation end? In other words—

THE COURT: No, no. Don't lead the witness.

A Well, all that I observed was that they just departed. I don't think there was any—just a few words, but then departed.

[fol. 2307] BY MR. MAYBERRY:

Q Now, concerning this tunnel that you mentioned, you mentioned overhearing these persons talk about, do you recall who first spoke about this tunnel?

A Rizzo.

Q Now, Mr. Langnes, after this conversation was over when was the next time that you seen me, Richard Mayberry that day?

A Evening meal.

Q Did you notice anything unusual at that time?

A I could see you were sort of tense.

Q What time of day was that?

A Between 4:30 and 5:00 o'clock.

Q Did you notice any of the other parties named previously or—

THE COURT: Which parties?

MR. MAYBERRY: The parties we were speaking of a few minutes ago.

BY MR. MAYBERRY:

Q Did you notice if they were present at the time?

A There in the mess hall, yes. I saw them in the mess hall.

Q Did you notice if they were in my company at the time?

MR. MEDONIS: If the Court please, I object to this. I think the question might be phrased who was with Mr. [fol. 2308] Mayberry when Langnes saw him.

THE COURT: It is leading.

(Exception noted.)

BY MR. MAYBERRY:

Q Who was in my presence at the time you seen me, Mr. Langnes?

A I think—

Q No. If you know.

A I don't know. I mean, I am not sure enough to testify to it.

Q Well, I only want to know if you know.

A No.

Q When was the next time you seen me after that on June 27th?

A In the exercise yard.

Q What time of day was that? Do you recall?

A Between 5:30 to 6:00 or maybe 5:00 o'clock to 6:00.

Q Do you recall what that was—whether it was Eastern standard time or daylight saving?

A It was Eastern standard time, but by prison time it would be daylight saving time.

THE COURT: Now, wait. I don't understand.

A We got a different time in the prison.

THE COURT: I understand that, but are you talking about 5:00 o'clock as being daylight saving time?

[fol. 2309] A No, 5:00 o'clock, if I am not mistaken, would be Eastern standard time.

THE COURT: When did you have supper? Did you have supper on daylight saving time?

A Yes.

THE COURT: Was it right after supper that you saw Mr. Mayberry in the exercise yard?

A Yes, sir.

THE COURT: Wouldn't that be daylight saving time?

A Yes. All right. Daylight saving time.

THE COURT: All right. That is important.

BY MR. MAYBERRY:

Q When was the last time you seen Richard Mayberry in the yard that night? Approximately what time was it? Do you recall?

A Around 6:00 o'clock.

Q Was that daylight saving time 6:00 o'clock, or Eastern standard?

A That would have been Eastern standard. It was 7:00 o'clock daylight saving time the last time I saw you.

Q Now, Mr. Langnes, directing your attention to this time that you observed me in the exercise yard after [fol. 2310] supper that night, where did that take place at? Where did you see me out there?

A On the handball court.

Q And what was I doing at that time?

A You were watching me and Dominick play handball.

Q Did you notice how I was dressed at the time?

A Yes.

Q How was that? How was I dressed?

A You had on general prison uniform, brown shirt, T-shirt, brown trousers. You weren't wearing a cap.

Q Did you notice if I was wearing a jacket?

A No, you weren't wearing a jacket.

Q Did you notice if I had in my possession a heavy brown overcoat?

A You didn't, no.

Q Did you notice if I was carrying anything in my hands at the time?

A You didn't. I didn't see anything in your hand.

Q Did you ever see me carrying any large or bulky packages that night?

A No.

Q Did you ever see me carrying any pieces of pipe in the yard that night?

A No.

[fol. 2311] Q Or a rope?

A No.

Q Now, at the time you seen me on the handball court what time was that, approximately? Do you remember?

A You mean—6:30, 7:00 o'clock daylight saving time.

Q Do you recall

A Myself, Domini, who else was present at that time?
di, and some few Dick Codispoti, Rockwell, Alfred Nar-

Q Do you recall
court first between undescript inmates.

A I believe I did. Mr. Langnes, who left the handball
the two of us?

Q Do you recall
where else that night.

A Prior to seeing me in the exercise yard any-
you walking up and down the area?

Q After you saw me in the handball court I seen
you seen me until I came down the area.

A Yes. I saw you on the handball court—you said

Q Was I on the court at 7:00 o'clock that night?

A At 7:00 o'clock

Q All right, Mr. Langnes, did you see me in the handball court the whole time or not?
gun tower on the west side I believe you were, yes.

A I did. I saw Mr. Langnes. Do you recall seeing a
[fol. 2312] Q Did you see him above the handball court?

that night?
A I did. I saw you notice what guard was on duty

Q Who was that?

A Passoth.

Q Did you not?
passed between Mr. Langnes and Passoth?

handball court? I saw whether or not any conversation
A Passoth— I saw Passoth and any prisoners on the

THE COURT:

if there was any conversation there and heard it. Wait a minute. First let's ascertain

A I don't remember the conversation, and secondly, if he was

BY MR. MEDONIS:

Q Mr. Langnes, did you notice any unusual conduct
on the part of Officer Passoth?

A Yes. I saw Mr. Langnes did you notice any unusual conduct
MR. MEDONIS: I saw Officer Passoth that night?

he might be asked
THE COURT: Objection. Wait a minute. I think

what he observed.
Yes. I know, but—

BY MR. MAYBERRY:

Q All right. What if anything did you observe Mr. Passoth doing that night?

[fol. 2313] A Passoth was pacing up and down the wall.

Q Is that all?

A Looking down at the court with an unusual intenseness.

Q What do you mean by that?

A As if expecting something.

MR. MEDONIS: Wait a minute.

THE COURT: Now, wait a minute.

BY MR. MAYBERRY:

Q What led you—

MR. MEDONIS: If the Court please, I object to the comment about the nature of the look. I ask it be stricken.

THE COURT: Yes. He can testify as to what he observed. Let that portion of the testimony stand that he saw Guard Passoth pacing back and forth.

(Exception noted.)

BY MR. MAYBERRY:

Q What prompts you to say he was looking with unusual intenseness? How can you—can you mention any specific conduct on his part, or any—

MR. MEDONIS: Well, I object to the form of the [fol. 2314] question.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q —or any other conduct on the part of Officer Passoth other than pacing up and down the wall?

A I did.

Q What was that?

A You was extremely tense.

MR. MEDONIS: Objection.

BY MR. MAYBERRY:

Q No. Don't state a conclusion because Gilbert is going to object and Sullivan will sustain. Give me facts. What leads you to say that?

A I can't give you facts. I can just state what I observed, what I actually saw him doing, but I mean, it wouldn't be stating as facts.

* * * *

[fol. 2401] BY MR. MAYBERRY:

Q Now, do you know, Mr. Langnes, whether or not this Butch Rizzo was an agent for the prison authorities on June 27th? Do you know of your own knowledge?

A Yes, he is.

MR. MEDONIS: Objection.

THE COURT: Wait a minute. The question is do [fol. 2402] you know of your own knowledge.

A Yes.

THE COURT: How do you know?

A He entrapped me and framed me.

THE COURT: We have overruled that. What else do you know?

BY MR. MAYBERRY:

Q What specific facts?

A I am on trial today.

Q What specific facts do you know that would show his acting as an agent for the prison authorities?

A He told me to go to the underground tunnel that didn't exist.

MR. MEDONIS: Wait a minute.

THE COURT: We are not going to permit that to go on again.

BY MR. MAYBERRY:

Q What specific fact—

THE COURT: Is that all you have?

MR. MAYBERRY: Will you let me conduct my defense?

A He bragged about it.

THE COURT: Is that the basis of your information? [fol. 2403]

MR. MAYBERRY: I wish you would permit me to conduct my own defense, Your Honor.

THE COURT: Keep quiet, Mr. Mayberry. Is that the basis of your information?

A Let me think a minute.

BY MR. MAYBERRY:

Q Do you have—

THE COURT: Just a moment.

BY MR. MAYBERRY:

Q —concrete facts that this person—

THE COURT: Just a moment, Mr. Mayberry.

BY MR. MAYBERRY:

Q Do you understand the question, Mr. Langnes?

THE COURT: Keep quiet, Mr. Mayberry.

MR. MAYBERRY: My witness isn't being in an inquisition, you know. This isn't the Spanish Inquisition.

THE COURT: Do you have any other basis upon which you can express an opinion?

[fol. 2404] A He bragged about it to me.

THE COURT: Is that the basis on which you are going to make a statement, his bragging to you?

A I am on trial today. What more proof do we need?

THE COURT: We sustain the objection and prohibit any questions along those lines.

(Exception noted.)

BY MR. MAYBERRY:

Q Now, do you know of any particular facts that you can relate that would indicate that this party was acting on direct orders from the prison authorities?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

THE COURT: We have just ruled on that, Mr. Mayberry.

BY MR. MAYBERRY:

Q Did you understand what His Honor was saying to you, Mr. Langnes, when he was questioning you a minute ago?

MR. MEDONIS: Wait a minute. If the Court please, [fol. 2405] we—

THE COURT: We are not going to go into that.

MR. MEDONIS: I think Mr. Mayberry has exhausted his questions within the limits of the offer.

MR. MAYBERRY: No.

BY MR. MAYBERRY:

Q For the record, do you understand what His Honor was saying to you a minute ago about this?

A Yes.

Q You did understand?

A Yes.

Q Did you ever hear this Butch Rizzo say that he was an agent for the prison authorities, Mr. Langnes?

MR. MEDONIS: Objection.

THE COURT: We have covered that. You are putting the same type of question in a different form, Mr. Mayberry. Now, you refuse to abide by the rulings of this Court—

[fol. 2406] MR. MAYBERRY: I am trying to ask the questions, Your Honor.

THE COURT: We are not going to permit you to ask such questions that have been ruled on before. It is hard for you to understand that, but we will insist that you abide by the rules.

BY MR. MAYBERRY:

Q Now, Mr. Langnes, do you know where this Butch Rizzo is today?

A Somewheres here in Pittsburgh.

Q Do you know when he got out of prison, if he is out of prison?

A Around 1966.

Q In the early part of latter part or what?

A Early part.

Q Now, do you know what the motive was? Do you know if there was any motive for the prison authorities seeking to entrap Richard Mayberry?

A Yes.

MR. MEDONIS: Objection.

THE COURT: Sustained, and the answer will be stricken.

(Exception noted.)

[fol. 2407] BY MR. MAYBERRY:

Q Did you ever see or do you know of your own knowledge whether or not this Butch Rizzo was ever paid off by the prison authorities for his work as an agent?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q Did you ever see him being paid by the prison officials?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q Well, did you ever see him getting any special treatment by the prison authorities?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q Do you know whether or not any relationship existed between this Butch Rizzo and the prison authorities?

A Yes.

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q On June 27th?

A Yes.

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

BY MR. MAYBERRY:

Q 1965?

A Yes.

MR. MEDONIS: This is obviously improper and—

THE COURT: Yes, they are improper. If that is all the questions that Mr. Mayberry has of the witness we will excuse this witness. You are either going to ask [fol. 2409] proper questions, and I told you along what lines we will permit further examination of this witness, or we are going to call it quits with this witness.

MR. MAYBERRY: Now, just what do you call proper? I have asked questions, numerous questions and everyone you said is improper. I have asked questions that my adviser has given me, and I have repeated these questions verbatim as they came out of my adviser's mouth, and you said they are improper. Now just what do you consider proper?

THE COURT: I am not here to educate you, Mr. Mayberry.

MR. MAYBERRY: No. I know you are not. But you're not here to railroad me into no life bit, either.

MR. CODISPOTI: To protect the record—

THE COURT: Do you have any other questions to ask this witness?

[fol. 2410] MR. MAYBERRY: You need to have some kind of psychiatric treatment, I think. You're some kind of a nut. I know you're trying to do a good job for that Warden Maroney back there, but let's keep it looking

decent anyway, you know. Don't make it so obvious, Your Honor.

THE COURT: Do you have any further questions to ask this witness?

MR. MAYBERRY: Yes, sir, on entrapment.

THE COURT: On entrapment?

MR. MAYBERRY: Yes, I do.

THE COURT: Now let's hear them.

* * * *

[fol. 2498] MR. LANGNES: I want to address the Court. I want to disqualify Your Honor and state the following reasons, and other things, too, also.

THE COURT: You are out of order.

MR. LANGNES: I figured that.

THE COURT: You are out of order, and you can raise—

MR. LANGNES: This is concerning the newspaper articles. They're blaming us for costing the taxpayers money. It is you and Maroney and the State.

THE COURT: You are out of order, Mr. Langnes. I want you to keep quiet.

MR. LANGNES: We asked for a mistrial and you insisted to this going on.

THE COURT: I said keep quiet.

MR. LANGNES: I have—

[fol. 2499] THE COURT: Take this prisoner out of the courtroom.

MR. LANGNES: Go to hell.

(Thereupon Mr. Langnes was removed from the courtroom.)

THE COURT: Go ahead with your case, Mr. Mayberry.

DOMINICK JOHN CODISPOTI, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Cont'd)

BY MR. MAYBERRY:

MR. MAYBERRY: Before we proceed on this I have to make a motion for the withdrawal of a juror.

THE COURT: Now proceed with your questioning, Mr. Mayberry.

MR. MAYBERRY: Because of the outburst of my co-defendant and the prejudicial effect it has caused, and [fol. 2500] also since my co-defendant has mentioned this article in yesterday's Pittsburgh Press about the money being expended in this case.

THE COURT: I want you to proceed with your questioning, Mr. Mayberry.

MR. MAYBERRY: I have a motion.

THE COURT: You will make the motion after you are through with this witness. Proceed with your questioning.

MR. MAYBERRY: I have a motion.

THE COURT: We will hear your motion later.

MR. MAYBERRY: I have a motion that is a timely motion, Your Honor. I feel it has to be made in time.

THE COURT: We will hear your motion after you are through with this witness, Mr. Mayberry. Now, go ahead.

MR. MAYBERRY: I have a motion that must be made on the record at the proper time, Your Honor, [fol. 2501] and I feel this is the proper time to make the motion. Under Maxwell vs. Shephard—no, Shephard vs. Maxwell, Supreme Court of the United States, has said that due to publicity, bad publicity by the newspaper such as they are doing in this case it has been established it is grounds for a mistrial. We certainly haven't asked the newspapers to print all this prejudicial matter about our past records, and the charges we are waiting to try, and \$40,000 of taxpayers' money.

THE COURT: You are out of order now. Proceed with the questioning. Proceed with the questioning of this witness. If you have anything, any motions, later on you may place them on the record. I have stated that three times. Now, proceed with your questioning.

MR. MAYBERRY: Could I have—

THE COURT: We will give you the opportunity to place whatever you want on the record. Proceed with [fol. 2502] your questioning.

MR. MAYBERRY: All right. Now, could I have a ruling, Your Honor, before we proceed on that?

THE COURT: I am not going to rule until you are through with this witness. I have stopped you from placing the matters on the record that are not germane at this time. Proceed with the questioning of your witness.

MR. MAYBERRY: As I am acting as my own counsel I feel it ought to be allowed—I feel I ought to be allowed to make a motion like any other attorney representing a client.

THE COURT: I will state to you once again, Mr. Mayberry, this is not the time to do it. Now proceed with the questioning of your witness.

BY MR. MAYBERRY:

Q All right, Mr. Codispoti, you have stated that at [fol. 2503] the time you observed Mr. Walz and Mr. Ferrara at the chart desk that they were not tied up. Did you notice whether they were restrained in any way of their freedom of movement?

A No, they wasn't restrained in any manner.

Q Well, did you notice any other prisoners in the vicinity, in the immediate vicinity of Officer Walz and Ferrara at that time?

A Yes, I did.

Q What time was this that you made this observation? Do you recall?

A A little after 7:00 o'clock daylight saving time.

(Thereupon Mr. Langnes was escorted back into the courtroom.)

MR. LANGNES: I still refuse to shut up.

MR. MAYBERRY: Now, what I was saying—

THE COURT: You keep quiet, Mr. Langnes. Proceed with your questioning.

MR. LANGNES: What I was saying—

THE COURT: Keep quiet.

MR. LANGNES: —about the newspapers and—

[fol. 2504] THE COURT: Keep quiet. We will hear you at a later time, at the lunch hour.

MR. LANGNES: I am saying it now while the people are here and know what's coming off.

THE COURT: Do we have a gag here?

MR. LANGNES: You'll have to gag me.

THE COURT: Do we have a gag here?

(Off record discussion.)

MR. MAYBERRY: I have to ask for a severance.

THE COURT: I have heard that before. It is denied again. Let's go on.

(Exception noted.)

MR. MAYBERRY: This is the craziest trial I have ever seen.

* * * *

[fol. 2582] THE COURT: You may call your next witness, Mr. Mayberry.

MR. MAYBERRY: Just a minute. The next witness is Gerald Rittle. He is one of the witnesses named in the notice of alibi defense that I filed with the office of the district attorney on October 12 of this year. I filed this man's name as an alibi witness on the notice of—

THE COURT: Call your next witness.

MR. MAYBERRY: Gerald Rittle.

THE COURT: Call your next witness, Mr. Mayberry.

MR. MAYBERRY: I just did.

THE COURT: He was not subpoenaed.

[fol. 2583] MR. MAYBERRY: Am I being denied Gerald Rittle as an alibi witness?

THE COURT: You know the order, Mr. Mayberry, call your next witness.

MR. MAYBERRY: Have I been denied Gerald Rittle as a witness?

THE COURT: You have an order as to that.

MR. MAYBERRY: I never received an order as to Gerald Rittle. I filed an alibi defense and named Gerald Rittle as an alibi witness on October 12 at least a month prior to the beginning of this trial, and I did make this notice of alibi defense under Rule 312 of the Pennsylvania Rules of Criminal Procedure.

THE COURT: Call your next witness that has been subpoenaed in your behalf.

MR. MAYBERRY: Do I understand that I am being denied Gerald Rittle as a defense witness?

[fol. 2584] THE COURT: You may not call Mr. Rittle. I have said that to you a number of times. Now proceed with the witnesses that have been subpoenaed.

MR. MAYBERRY: Then I am denied compulsory process for obtaining this witness? Is that correct?

THE COURT: I stated all I am going to say on that. Proceed with your next witness.

MR. MAYBERRY: My next witness is Lloyd Moore. He is also an alibi witness and one—

THE COURT: He has not been subpoenaed. Call your next witness.

MR. MAYBERRY: Am I being denied Lloyd Moore?

THE COURT: Call your next witness who has been subpoenaed, Mr. Mayberry.

MR. MAYBERRY: I am asking for a ruling from [fol. 2585] Your Honor.

THE COURT: You have had an order of this Court, Mr. Mayberry, earlier as to the number of witnesses and by name who have been subpoenaed to testify in your behalf. Now call those.

MR. MAYBERRY: May I make a show of proof on this witness here what I intend to prove?

THE COURT: No, you may not, sir. You have already done that on two different occasions.

MR. MAYBERRY: In that case is it my understanding that Your Honor has denied me both Gerald Rittle and Lloyd Moore as defense witnesses, is that correct?

THE COURT: They have not been subpoenaed by the Court, that is correct.

MR. MAYBERRY: But I have asked that they be [fol. 2586] subpoenaed as alibi witnesses as far back as October 12 of this year.

THE COURT: All right. Call the witnesses who have been subpoenaed.

MR. MAYBERRY: Now the next witness is Raymond Wilson, also an alibi witness.

THE COURT: Mr. Mayberry, I am not going to permit you to go on. You have already filed a show of proof. That was filed as a matter of record. You have an order of Court relating to the calling of certain witnesses in this case.

MR. MAYBERRY: You have never ruled on these particular people I have named. You have not subpoenaed them, but you never ruled on whether or not I could have them as witnesses, either. Now, Lloyd Moore and Gerald Rittle and Raymond Wilson are all alibi witnesses named in the notice of alibi defense that I filed on October 12 with the district attorney's office and with the court.

[fol. 2587] THE COURT: Very well. Put on the record that Raymond Wilson has been included in this list of witnesses and he was not subpoenaed. Now proceed.

MR. MAYBERRY: And how about Gerald Rittle and Lloyd Moore?

THE COURT: The same thing.

MR. MAYBERRY: Let the record also note that I filed a notice of alibi defense and named these witnesses in that notice of alibi defense.

THE COURT: I don't know what the record shows, but you go ahead.

MR. MAYBERRY: At this time I ask to submit as evidence a copy of the notice of alibi defense that I filed on October 12, 1966 in which I asked for these particular witnesses to be subpoenaed as alibi witnesses.

THE COURT: You have that. That is already filed [fol. 2588] of record of all witnesses you asked to be subpoenaed in this case, and the Court has taken action on that. Now proceed with the witnesses that you already have.

MR. MAYBERRY: May I submit this notice of alibi defense as evidence, Your Honor?

THE COURT: No, you may not, sir. Now go ahead.

MR. MAYBERRY: Well, I would like to read it into the record. It is very brief, a letter concerning the notice of defense of alibi defense. May I read it.

THE COURT: No, you may not. Proceed with the calling of your next witness.

MR. MAYBERRY: Well now, I think I ought to be permitted to read—

THE COURT: I directed you not to read it, Mr. Mayberry, and I asked you to call your next witness, [fol. 2589] and you have an exception to the ruling of the Court. Now go on.

MR. MAYBERRY: My next witness is John Winkler.

THE COURT: He will not be called.

MR. MAYBERRY: He is a prisoner at the penitentiary.

THE COURT: He will not be called.

MR. MAYBERRY: My next witness after him is George Welch, another prisoner at the penitentiary at Pittsburgh.

THE COURT: Let the record show that the following witnesses have been subpoenaed by this court and they are the only witnesses that you will be permitted to call at this time. You have the witness Madronal, Montgomery, Mr. Maroney, Guard Wilbik. Let's limit it to that and let the record show that all the witnesses have not been called and have been turned down by the Court.

[fol. 2590] MR. MAYBERRY: Does that also apply to prisoner George Deputy, prisoner at the penitentiary?

THE COURT: You don't hear too well, Mr. Mayberry.

MR. MAYBERRY: And you—

THE COURT: Just a moment. You have filed a list of all the witnesses whom you wanted in this case. It is a matter of record.

MR. MAYBERRY: I would like it to be noted on the trial record—

THE COURT: It is noted on the record. Every paper you have filed is a part of the trial record.

MR. MAYBERRY: I would like to have a ruling on each witness I asked for.

THE COURT: No, I don't propose to rule again. Now go on and call the witnesses that have been properly subpoenaed.

[fol. 2591] MR. MAYBERRY: Well, my next witness is George Deputy, who I call next.

THE COURT: Refused.

MR. MAYBERRY: And after that I ask for Edward C. Robinson, a prisoner at the penitentiary be called as a witness.

THE COURT: Mr. Mayberry, of all the innumerable contempts you have committed, you are committing a contempt of court. I have told you that you have certain witnesses that have been subpoenaed that may be called.

MR. MAYBERRY: All I am asking the Court is to rule.

THE COURT: There will be no more name calling.

MR. MAYBERRY: Is it the same ruling?

THE COURT: No, sir. I am not going to keep ruling on that. I want you to understand that, Mr. Mayberry. [fol. 2592] Now call the witnesses whom the Court indicated that are available to you.

MR. MAYBERRY: Before I get to that I wish to have a ruling, and I don't care if it is contempt or whatever you want to call it, but I want a ruling for the record that I am being denied these witnesses that I asked for months before this trial ever began.

THE COURT: Once again let the record show that the defendant Mayberry together with all of the other defendants have submitted a list of witnesses with a show of proof. The Court has passed upon all of these witnesses and the reason stated in the show of proof as a result of which certain witnesses were subpoenaed to appear in this court. The Court therefore is limiting the defendants to the production of those witnesses who have been subpoenaed to appear in this case.

* * * *

[fol. 2608] THE COURT: All right. In connection with the offer that you have made, this witness will not be asked any questions relating to this so-called self-defense that you have; this witness will not be permitted to be asked any questions as to the illegality of imprisonment on June 27, 1965 and that you were not confined in accordance with the law; this witness may not be asked any questions regarding the so-called illegality of confinement that therefore you were illegally restrained of your liberty; this witness will not be asked any questions relating to any orders that he may have given to fire tear gas bombs into the ward; furthermore, this witness will not be questioned as to any orders that he may or may not have given relative to firing bullets into the hospital; he will not be asked any questions relating to any matters following the arrest as to your allegations of not being able to receive letters, or visits, or to make any contacts.

You will not be permitted to ask any questions of this witness relating to a so-called underground dungeon; you will not be permitted to ask any questions as to denial of access to any of the courts or to any legal redress.

You will not be permitted to ask this witness any questions relating to your cell block and the job that you had. You will not be permitted to ask this witness relating to the selling job that you had to prove you had nothing to do with this escape.

These are matters that you will not be permitted to make inquiries into.

MR. MAYBERRY: Yeah? Why? What are you scared that certain fact might be brought out?

THE COURT: I have made a ruling, Mr. Mayberry, limiting—

MR. MAYBERRY: I know what the hell you done, you creep. What do you do? Eat at the same club as him every night? Scared that certain facts might be brought out?

[fol. 2611] THE COURT: These are the limits in which you will not interrogate this witness, and I will tell you ahead now that we will stop you, if you do.

MR. MAYBERRY: You don't want certain things brought out.

THE COURT: That's enough, Mr. Mayberry.

MR. MAYBERRY: Ah, nothing is enough. It's enough when I feel like saying it's enough.

THE COURT: It's enough when I say it's enough, and you will adhere to the rulings—

MR. MAYBERRY: I will like hell. I will like hell.

* * *

[fol. 2614] THE COURT: Let the record show that you have been performing a three ring circus very well, and let the record show further, so there is no mistake about it, that the Court does not intend to let you get away with it.

* * *

[fol. 2681] BY MR. MAYBERRY:

Q Do you know of your own knowledge whether or [fol. 2682] not prisoners at the penitentiary were permitted to have tools in their cells as of June 27, 1965?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

MR. MAYBERRY: Now, Your Honor, you asked me what I intended to prove. I refer you to point number 7 that I was going to prove the impossibility of securing these weapons and other exhibits presented by the Commonwealth.

THE COURT: Yes, you already intrerogated the witness on that, and you got answers.

MR. MAYBERRY: I have not asked him anything about what a prisoner is allowed to have over in his cell at the penitentiary concerning chemicals and tools.

THE COURT: All right. We have ruled on those questions already. Do you have anything else, Mr. Mayberry? I think you have exhausted the matters that you intended to prove by this witness.

MR. MAYBERRY: Point number 7, Your Honor. I haven't asked the witness about the availability of tools to prisoners in their cells.

THE COURT: That was not your offer. You asked about the exhibits. Now go on.

MR. MAYBERRY: I said in point number 7 that I intended to prove by the witness the impossibility—

THE COURT: I have ruled on that, Mr. Mayberry. Now proceed with your questioning, and don't argue.

MR. MAYBERRY: You're arguing. I'm not arguing, not arguing with fools.

* * *

[fol. 2790] THE COURT: I am sure the jury has noted these contemptuous outbursts, * * *

* * *

[fol. 2939] THE COURT: You may question Mr. Madronal, Mr. Codispoti.

MR. MAYBERRY: I haven't finished yet.

THE COURT: Yes, you have.

MR. MAYBERRY: I haven't finished yet with my witness. You do this everyday. You cut me off before I fully develop my defense.

THE COURT: We are not going to permit you to ask this witness any questions based upon what he knows about Officer Ferrara back in 1962. I have ruled on that at least a half dozen times.

MR. MAYBERRY: Even though this witness knows facts that indicate a hatred existing between Officer Ferrara and me as far back as then?

THE COURT: We have sustained the objections. Now, if you have nothing else you are through with this witness.

[fol. 2940] MR. MAYBERRY: No, I am not through.

THE COURT: Ask one more question then and you will be through. Go ahead.

BY MR. MAYBERRY:

Q Mr. Madronal, do you know of your own knowledge whether or not at the time of this trial, November, 1966, whether or not any hatred existed between Guard Ferrara and Richard Mayberry?

MR. MEDONIS: Objection.

THE COURT: Sustained.

(Exception noted.)

THE COURT: Now you are through, Mr. Mayberry.

MR. MAYBERRY: No, because—

THE COURT: Yes, you are. Proceed with your questioning, Mr. Codispoti.

MR. MAYBERRY: No, I am not finished with my witness.

THE COURT: Yes, you are, sir.

MR. MAYBERRY: No, I am not, sir.

[fol. 2941] THE COURT: We say you are, sir, and you keep quiet. Now proceed, Mr. Codispoti.

BY MR. MAYBERRY:

Q Mr. Madronal, have you—

THE COURT: All right, we will do the same thing as yesterday. Remove Mr. Mayberry from the courtroom. You are asking for it, and we will do it.

MR. MAYBERRY: Let the record note that I am not present at a critical stage of the proceedings.

THE COURT: We will let the record note that. Proceed, Mr. Codispoti.

(Thereupon Mr. Mayberry was removed from the courtroom.)

* * * *

[fol. 2948] MR. MAYBERRY: Before we begin I would like to make an objection to the night session as placing an unwarranted burden on defendant Mayberry and interfering with his right to a fair trial, that defendant Mayberry must prepare all his motions and papers concerning this trial over at the cell in the penitentiary at night, and he must print these by hand without the benefit of any help from a typewriter or Mimeograph machine or anything, and he never gets back to the penitentiary anyway until around 6:00 o'clock at [fol. 2949] night, and by the time he gets done preparing the papers for the next day's court day it is 10:30, quarter to 11:00 at night. As it is now I have no way of preparing my motions for tomorrow's session due to this night session that we are now into.

THE COURT: You may proceed, Mr. Codispoti.

MR. MAYBERRY: And for that reason I would ask that the night session be terminated now.

THE COURT: You may proceed, Mr. Codispoti.

MR. MAYBERRY: Is my motion ruled upon?

THE COURT: Yes, it is obviously denied. Go on.

MR. MAYBERRY: I ask to finish my direct examination of the witness Madronal.

THE COURT: You are through, Mr. Mayberry.

MR. MAYBERRY: I haven't finished.

[fol. 2950] THE COURT: You are through. I said you are through. Keep quiet. Let's go ahead, Mr. Codispoti.

MR. MAYBERRY: I am not through questioning my witness for the defense which you said—

THE COURT: Mr. Mayberry, you will either keep quiet or the Court will be compelled to eject you from the courtroom during this session.

MR. MAYBERRY: I cannot remain silent while I have yet failed to finish.

THE COURT: You will remain silent outside. Remove Mr. Mayberry.

MR. MAYBERRY: I object to being removed from my trial.

(Thereupon Mr. Mayberry was removed from the courtroom.)

* * *

[fol. 3017] MR. HARPER: Before we resume I would like to address the Court. Before recess I think I made some remarks to the Court that were perhaps out of order. Well, I want to say this, Your Honor, perhaps my patience is drawing a little short and my nerves are on edge and I perhaps said things that I should not have said. Since I have been a member of the bar I have always tried to conduct myself in a complimentary manner befitting my profession. If I offended the Court in front of the ladies and gentlemen of the jury I am very sorry and ask the Court to accept my apology.

THE COURT: We thank you for the statements, Mr. Harper, and we will just forget about this.

MR. HARPER: Thank you, Your Honor.

[fol. 3018] MANUEL MADRONAL, resumed the stand and testified further as follows:

THE COURT: Mr. Codisopti, do you have any further questions of Mr. Madronal?

MR. MAYBERRY: Before defendant Codispoti I want to put upon the record that I have never finished my case under the due process guaranteed by the Fourteenth Amendment and equal protection of the law to the Federal Constitution and the Sixth Amendment to the Federal Constitution, and I ask and demand my right to a fair trial and to finish my examination of the witness Madronal so that I may present my defense of not guilty by reason of entrapment, and so that I may impeach the credibility of the Commonwealth witnesses, so that I might establish my innocence through this witness as I have indicated in the show of proof that I presented to Your Honor, and I also ask for this right to [fol. 3019] finish my direct examination because I have never yet been given an adequate opportunity to complete my examination of the witness, and for that reason I will not sit quietly by while you refuse me the right to present my defense, and for that reason I again request permission to resume and complete my direct examination of the witness Madronal for the same reasons that you had this man brought up from Craterford Penitentiary, all the way at the expense of the taxpayers, and for that reason also I ask to complete my direct examination of the witness, and I cannot and will not abide by any adverse ruling to this motion for the same reason that I have stated earlier, and because I feel that I have a right as an American citizen under the constitution and the laws of the United States and the laws of Pennsylvania, both in the statute books and the common law [fol. 3020] right to a fair trial, and for that reason also I ask to be allowed to finish my direct examination.

THE COURT: That's enough.

MR. MAYBERRY: And because of this—

THE COURT: That's enough. Keep quiet.

MR. MAYBERRY: I will not abide by the rulings of the Court, and for that reason I ask to finish my di-

rect examination, and I hope you will permit me to complete my direct examination.

THE COURT: Will you stop to take a breath, Mr. Mayberry?

MR. MAYBERRY: If not, I am sorry, Your Honor, but I will have to continually interject—

THE COURT: Very well. Remove this defendant. I was going to state that you are to be here for the cross-examination of this witness, but apparently you [fol. 3021] will not stop.

MR. MAYBERRY: I cannot stop.

THE COURT: And you are forcing me to again eject you from this courtroom, which I am now doing. Remove this prisoner.

(Thereupon Mr. Mayberry was removed from the courtroom at 9:30 p.m.)

* * * *

[fol. 3031]

Thursday, December 8, 1966
Pittsburgh, Pennsylvania

MR. MAYBERRY: Your Honor, I have a motion to make.

THE COURT: Wait a minute. I would like you to reserve your motion until after the noon recess.

MR. MAYBERRY: No, before we begin—

THE COURT: Please.

MR. MAYBERRY: For the sake of time I have—

THE COURT: You will be given an opportunity to be heard. I am asking you to reserve it until the noon recess.

MR. MAYBERRY: For the sake of time in this these motions must be made at this point.

THE COURT: I will hear them after recess, Mr. [fol. 3032] Mayberry. Now let's go on.

MR. MAYBERRY: For the sake of time in this the motion must be made now because otherwise the motion will be made out of time.

THE COURT: Is this the same motion that you made last night?

MR. LANGNES: I am referring to—

THE COURT: I am not talking to you.

MR. MAYBERRY: We each have a motion.

THE COURT: Is this the same motion you made last night?

MR. MAYBERRY: No.

THE COURT: Then, of course, there is nothing before the Court until the noon recess.

MR. MAYBERRY: Yes, there is. The Court has no knowledge of what the motion is, for one thing.

[fol. 3033] MR. LIVINGSTON: If Your Honor please, at this time on behalf of defendant Langnes I have a motion to make. I think it is timely at this time, and should be made at this time.

THE COURT: All right, I will hear all motions at this time.

MR. LIVINGSTON: On behalf of defendant Langnes I now move for the withdrawal of a juror, or in the alternate, for a severance, or in the alternative at least for an interrogation of the jury to determine what if any impact might be had on the basis of an official communique by the district attorney of Allegheny County. I was shocked. It would be a gross understatement to say shocked by the conduct of the district attorney in writing a letter in the midst of this trial to the Pittsburgh Press and in that letter referring to matters which would be clearly prejudicial if brought out in the course [fol. 3034] of this trial by his assistant by referring to detainers against defendant Langnes in other jurisdictions, by referring to the sentence imposed upon the defendant Langnes, in making an attempt to justify his conduct in the prosecution of this trial. I submit that this official conduct on behalf of the district attorney taken in consideration with the whole picture in this case, including the flash bulbs popping in the eyes of the defendants as they walked in the door of the courtroom, the treatment continually by the various elements of the news media is tantamount to conduct that would make Heinrich Heimmler blush with shame. I submit on the

basis of this conduct of the district attorney and the basis of the news media, and on the basis of what I talked about before with reference to certain witnesses in this case, that the defendant Langnes cannot possibly be afforded a fair trial in this circus atmosphere, and I [fol. 3035] move in his behalf for the withdrawal of a juror or a severance of his case.

THE COURT: Your motion is denied.

(Exception noted.)

MR. LIVINGSTON: I ask leave to introduce into the record at this time copies of the letter published in the Pittsburgh Press.

THE COURT: It will not be done at this time. We have an agreement as to when that may be done, and all those matters will be done at the proper time.

MR. LIVINGSTON: At a separate time.

MR. LANGNES: What the hell are you trying to prove, Judge?

THE COURT: I take it that you have the same motion, Mr. Mayberry.

MR. MAYBERRY: Yes, I have something to say that [fol. 3036] I agree with—

THE COURT: I take it that you have the same motion.

MR. MAYBERRY: I concur with Mr. Livingston's motion for a severance, and I ask for a severance as to Richard Mayberry from the other two defendants, and with the same alternatives that were expressed by Mr. Livingston, only concerning defendant Mayberry instead of defendant Langnes, and I also, upon the additional ground, that the late session last night has prejudiced my right to a fair trial in this case in that I was not returned to the penitentiary until 10:30 last night, and I wasn't able to go to sleep until 12:00 o'clock due to the fact I had to prepare my motion, written papers for today's session, and I was brought down here at 6:00 o'clock this morning. I haven't had sufficient sleep last night to be mentally alert for today's proceedings, and [fol. 3037] for those grounds I also ask for the removal of a juror or a severance or a continuance of the case

until I am sufficiently rested to proceed with this trial in a mentally alert condition.

THE COURT: I take it, Mr. Codispoti, that you have the same motion incorporating all these things.

MR. CODISPOTI: Except for the timing, Your Honor. I didn't get back to the prison until approximately 11:00 o'clock. I wasn't able to go to bed until approximately 12:30. By the time I was processed and whatnot, you know, and now I was awakened at 6:00 o'clock in the morning and I was processed to come down here. I haven't prepared my defense for the day, and I ask that the case be continued and that any further night sessions be done away with because I am—I am in the position of being processed coming and going, and that [fol. 3038] takes considerable time.

THE COURT: All right. The motions are denied individually and collectively.

(Exception noted.)

THE COURT: Now, Mr.—

MR. MAYBERRY: No, you don't deny the motion, Your Honor, because there is no ground for denying the motion. It is made and should be granted according to law. If you are going to go according to law, Your Honor, you are bound by the law just as much as I am. You just can't make an arbitrary ruling at your whim like you are God or somebody. You have to go by the law the same as we do. I refuse to accept any of the ruling on the part of the Court except the granting of my motion, and I will not—

THE COURT: You have.

MR. MAYBERRY: —not abide by any other ruling [fol. 3039] of the Court other than a granting of my motion. I won't sit and be railroaded into a life sentence due to the fact that you wish to finish this trial just for the sake of convenience. It is obvious to me that there is some kind of conspiracy going on here. The district attorney's office is contacting the news media, giving all the details of my past criminal record, all the charges I am waiting for that they couldn't introduce in evidence at the trial, so they are trying to bring it in that way, in the

back door, as you are so fond of saying, by giving this same information to ~~the~~ jury through the local news media. I refuse to submit to these illegal and highhanded tactics on the part of the local courts and the district attorney's office. I will not sit quiet at this trial and allow you to flaunt my rights, my inalienable rights as an American citizen even though I am convicted of crimes [fol. 3040] and in the penitentiary. I refuse to submit to these type of tactics. I will not sit here and remain quiet as long as I can speak. So you either have an alternative of granting my motion or sitting here listening to me go on continually with a tirade of words. I will not be quiet at any time from now on unless my motion is granted. I will not be denied by right to a fair trial. I will not be denied my rights under the law. I will not tolerate these type of proceedings as long as I am able to offer any kind of opposition to them. Now, it is as simple as that, and that's my position, and I intend to maintain it throughout the course of these proceedings, and you understand that.

THE COURT: We will ask that this contemptible display cease. If you will only keep quiet for just two sentences I will clarify this for you. Mr. Mayberry, because I am not going to put up with this. Now keep [fol. 3041] quiet.

MR. MAYBERRY: I will not keep quiet. I will not be quiet. You are dragging justice in the mud and making a mockery of this trial.

THE COURT: Very well, Mr. Mayberry, your case is terminated. It is finished.

MR. MAYBERRY: It is not terminated.

THE COURT: Remove Mr. Mayberry from the court.

(Thereupon Mr. Mayberry was removed from the courtroom at 10:25 a.m.)

* * * *

[fol. 3044] THE COURT: May I address my remarks to all three defendants at this time and—

MR. MAYBERRY: Before you address the defendant—
[fol. 3045] ants—

THE COURT: Keep quiet.

MR. MAYBERRY: Mr. Mayberry has an objection.

THE COURT: Keep quiet. I am doing this for your own protection, and keep quiet.

MR. MAYBERRY: You ruled that my case was terminated before I was able to finish it. I can't sit here quietly. I protest this action on your arbitrarily terminating my defense before I finished with my witnesses that you yourself have called all the way from Philadelphia at the expense of the County and the taxpayers, and you have ruled my defense terminated. I won't sit quiet and abide by the ruling because I haven't finished presenting my defense to the charges. I am here on a charge of prison breach and holding hostage which are serious charges. It carries life imprisonment and 10 years. You [fol. 3046] have denied me the right to present a defense to these charges by terminating my defense before I even finished.

THE COURT: Keep quiet.

MR. MAYBERRY: Because of that I will not keep quiet.

THE COURT: Remove Mr. Mayberry. You are asking for it, Mr. Mayberry.

(Thereupon Mr. Mayberry was removed from the courtroom at 11:15 a.m.)

* * *

[fol. 3060] MR. MAYBERRY: I have a few things I want the record to note.

THE COURT: The testimony is closed, sir.

MR. MAYBERRY: No. Concerning matters that have occurred during this trial, concerning the defendant Mayberry. Now—

THE COURT: That will be done in your summation.

MR. MAYBERRY: No, I have some things I wish to state before the testimony is closed.

[fol. 3061] THE COURT: You may proceed, Mr. Mayberry.

MR. MAYBERRY: I have some objections to place on the record. I was missing during a critical stage of the proceedings, and while I was absent from the courtroom defendant Codispoti was questioning his witness Madronal

and brought out certain things directly prejudicial to me, and I wish to let it also be noted on the record that my one witness Donald Montgomery, I was refused and denied the right to present my defense through him, through no reason of mine but merely because the Court refused to let me present this witness, and this was my main defense witness to prove entrapment.

MR. MEDONIS: If the Court please—

MR. MAYBERRY: The Court terminated my case before I was permitted to present all of it.

THE COURT: I wish—

[fol. 3062] MR. MAYBERRY: I want to place an objection on the record to that.

THE COURT: Let the record show that everybody has been given a full opportunity—

MR. MAYBERRY: Not a full opportunity.

THE COURT: All right. We will remove you again. Apparently that is what you want. Remove Mr. Mayberry.

MR. MAYBERRY: Let the record show that I am absent from the critical part of the proceedings.

(Thereupon Mr. Mayberry was removed from the courtroom at 11:30 a.m.)

* * *

[fol. 3065] (Thereupon Mr. Mayberry was returned to the courtroom at 11:35 a.m.)

THE COURT: You may proceed with your summation, Mr. Mayberry.

MR. MAYBERRY: Before I make my address to the jury, Your Honor, I ask to avail myself to the right I reserved earlier in this trial which you said I was granted, and that is to be allowed to read into the record the news items in the local newspapers which Mr. Livingston has been kind enough to gather together for the defendants.

THE COURT: That will be preserved for and on behalf of all defendants, and we will make arrangements for that.

MR. LIVINGSTON: In that respect to Mr. Mayberry there is no doubt that his rights along those lines have been amply protected.

MR. LANGNES: After some consideration, Your [fol. 3066] Honor, I decided to make a summation.

THE COURT: We will give you that right, sir. You may proceed, Mr. Mayberry.

(Thereupon Mr. Mayberry closed to the jury.)

(During Mr. Mayberry's summation):

MR. MEDONIS: If the Court please, before Mr. Mayberry goes on I would like to preserve the right to objection to anything he says in his statement rather than interrupt during the summation.

MR. MAYBERRY: That would be the proper procedure, anyway, Mr. Medonis, to wait before you make your objections until I am finished.

THE COURT: That is not quite the procedure, but we will accord that to you.

MR. MAYBERRY: That is the general rule to [fol. 3067] wait until a person is finished a summation and then make the objections, if you don't mind.

THE COURT: Mr. Mayberry, your hour is up. We will allow you an additional ten minutes at which time you will stop.

MR. MAYBERRY: I haven't gotten to my—

THE COURT: We are allowing you an additional ten minutes.

MR. MAYBERRY: I am not finished with the presentation of my summation.

THE COURT: Now, I don't want an argument.

MR. MAYBERRY: I am going to argue my case until I am finished unless you are getting where you just have to have me dragged out of here again.

THE COURT: Go on.

MR. MAYBERRY: Don't you want these facts brought out where the Commonwealth's witnesses are [fol. 3068] testifying to a bunch of irrelevant nothings? They only had two witnesses and they were half nuts anyway.

THE COURT: Members of the jury, we will now take our luncheon recess. In view of the fact that it is now a quarter to 1:00 I am going to ask you to be back here at 2:00 o'clock and we will continue with this case. Let the record show that Mr. Mayberry, having had an hour and ten minutes in summation, is now finished.

(Thereupon court recessed at 12:45 p.m.)

(After recess at 2:00 p.m.)

THE COURT: Mr. Langnes, there appears some doubt this morning as to whether or not you desire to change your opinion as to summation. If your position is still the same as it was this morning of course we will proceed.

[fol. 3069] **MR. MAYBERRY:** Before defendant Langnes—

THE COURT: Keep quiet, Mr. Mayberry. If your position is still the same as has been this morning of course we will go on. Do you wish to make a summation or closing argument to the jury?

MR. LANGNES: Yes, sir.

MR. MAYBERRY: Before defendant Langnes makes his summation I ask to be permitted to finish mine because due to the lengthy nature of this case I was not able to finish summing up to the jury this morning, so I ask to be given as much time as necessary to finish my summation to the jury.

THE COURT: The Court has already ruled on that, Mr. Mayberry. You may proceed, Mr. Langnes.

MR. MAYBERRY: I wish to finish my summation, and I am going to finish it, either here or be gagged, or [fol. 3070] else be removed from the courtroom, but I am not going to sit here silent until I get a chance to finish summing up my case to jury. So it is a matter of which you would rather do allow me to finish or gag me and have me removed from the courtroom, because I will not sit here silent and allow you to run roughshod over me without speaking out against it.

THE COURT: You may proceed, Mr. Langnes.

MR. MAYBERRY: Ladies and gentlemen, as I was stating this morning, the Commonwealth's witness was Guard Klym, and—

THE COURT: You are asking for it, you are asking for it. Take him out.

MR. MAYBERRY: Guard Klym testified—

THE COURT: Take him out.

(Thereupon Mr. Mayberry was removed from the courtroom at 2:05 p.m.)

[fol. 3075] THE COURT: Before you proceed, Mr. Medonis, I would like to have the defendant Mayberry brought in.

(Thereupon Mr. Mayberry was returned to the courtroom at 3:42 p.m.)

THE COURT: Let the record show that Mr. Mayberry is here before the Commonwealth sums up. You may proceed, Mr. Medonis.

MR. MAYBERRY: I haven't finished my summation to the jury. I haven't finished presenting my evidence, and I refuse to sit here quiet until I have been given an opportunity to present my defense, to finish my case, which has so far been denied to me, and for that reason I am going to continue my speech to the jury until I finish my summation.

THE COURT: You just think you are, Mr. Mayberry. I have asked you to be brought in here solely for the purpose that you may hear the summation of the Commonwealth in which you might be interested. If you are going to tell me—

MR. MAYBERRY: If I would be interested in hearing it. First I would like to complete my summation before—

THE COURT: You have already finished Mr. Mayberry.

MR. MAYBERRY: I haven't finished.

THE COURT: Everything is on the record, and I am not going to hear that, Mr. Mayberry.

MR. MAYBERRY: I am not finished.

THE COURT: Yes, you have, sir.

MR. MAYBERRY: No, I haven't.

THE COURT: Yes, you have, sir.

MR. MAYBERRY: Ladies and gentlemen, as I was saying—

THE COURT: All right. You have asked for it. Let the record show that Mr. Mayberry has been given a full opportunity to be present. He prefers not to abide by the directives of the Court, and Mr. Mayberry may be removed from this courtroom.

(Thereupon Mr. Mayberry was removed from the courtroom at 3:43 p.m.)

* * * *

[fol. 3089]

Friday, December 9, 1966
Pittsburgh, Pennsylvania

MR. MAYBERRY: Before Your Honor begins the charge to the jury defendant Mayberry wishes to place his objection on the record to the charge and to the whole proceedings from now on, and he wishes to make it known to the Court now that he has no intention of remaining silent while the Court charges the jury, and that he is going to continually object to the charge of the Court to the jury throughout the entire charge, and he is not going to remain silent. He is going to disrupt the proceedings verbally throughout the entire charge of the Court, and also he is going to be objecting to being forced to terminate his defense before he was finished.

[fol. 3090] THE COURT: I would suggest, Mr. Mayberry, that you remain quiet now.

MR. MAYBERRY: I am also going to object to being forced to stop—

THE COURT: I am going to give the charge of this Court, Mr. Mayberry, and you are not going to stop me.

MR. MAYBERRY: I will not—

THE COURT: Guards, remove the defendant. We will take a short recess, and bring this defendant back in such a situation so that he can no longer interrupt the proceedings.

MR. CODISPOTI: You had better set the motion for defendant Codispoti if you intend to gag defendant Richard Mayberry.

THE COURT: Take Mr. Codispoti as well.

MR. CODISPOTI: You are not going to gag him [fol. 3091] and make me stay quiet.

THE COURT: We are not going to put up with any monkeyshines any longer.

MR. CODISPOTI: You have been making them for five weeks.

THE COURT: We will take a short recess, members of the jury.

(Thereupon a recess was had at 9:50 a.m.)

(After recess at 10:10 a.m.)

MR. LANGNES: Before you proceed with the points of the charge to the jury I want to say one thing definitely clear. I object to what you did to my two co-defendants, and I swear on my mother's name that I will keep my promise to you, the two threats I made. Don't worry about me interrupting during your summation. I won't even dignify these stinking proceedings, punk, go to hell, and I will shake hands in hell with you. I will [fol. 3092] be damned to you.

MR. MAYBERRY: (Through gag) Defendant Mayberry objects, objects, objects to the whole proceedings, and he refuses to take any part in these proceedings, and he will continually object throughout the whole stinking, lousy, mockery that you are making of what is supposed to be a trial, and as long as he can make any noise through his nose, ears, mouth, or any other way he will continue to object in any way possible through this whole proceedings. He refuses to be quiet in this courtroom while you, the Judge, dismiss many basic fundamental rights that he has as an American citizen which you obviously—

THE COURT: We obviously can't go on this way. I can't go on this way. I must have peace and quiet to make my charge to the jury. I cannot do it under these

[fol. 3093] circumstances. Is there anything we can do to try to keep Mr. Mayberry quiet?

MR. CODISPOTI: (Through gag) You can try knocking me in the head with a sledge hammer. Maybe that will keep me quiet. Maybe that would be befitting with the proceeding going on.

THE COURT: I must charge the jury.

(Thereupon Mr. Codispoti, Mr. Mayberry, and Mr. Langnes were removed from the courtroom at 10:15 a.m.)

(Thereupon a recess was had at 10:15 a.m.)

(After recess at 10:25 a.m.)

MR. MAYBERRY: (Through gag) (Grunt, grunt, grunt, grunt, grunt, grunt, grunt, grunt.)

MR. CODISPOTI: (Through gag) (Grunt, grunt, grunt, grunt, grunt.)

[fol. 3094] THE COURT: We will take a recess and find some other solution. Some other solution must be found where I can have the opportunity of addressing the members of the jury. I might state for the record that under the law the accused defendants here must be present during the charge of the Court. That is the law, and therefore we have tried to make it possible that they be present to hear the charge and to proceed with the charge without interruption. Apparently this will not work out, so we have to make some other possible solution to this because I must deliver my charge to you before you can consider this case. We will take a recess.

MR. CODISPOTI: (Through gag) That's right.

MR. LANGNES: You are a dead man, stone dead, Your Honor.

(Thereupon a recess was had at 10:27 a.m.)

[fol. 3094a] December 12, 1966 1:00 P.M.
Pittsburgh, Pennsylvania

MR. LIVINGSTON: If it pleases the Court, without causing any additional delay, to protect the record on behalf of the defendant Langnes, I now move for a withdrawal of a juror and a continuance of the case in view of the fact that the two co-defendants have been gagged and strait-jacketed. I submit to the Court that the defendant Langnes has been highly prejudiced by this order, which I do not criticize, but I would ask that on his case at least that a juror be withdrawn or his case be severed at this time.

THE COURT: That motion is denied.

(Exception noted.)

THE COURT: Before I proceed with the charge I think that the record should show what has transpired since this morning because the record is silent.

[fol. 3094b] Let the record show that after attempts have been made by the Court to give its charge to the jury, the defendant Mayberry and defendant Codispoti were placed in strait-jackets and gagged and returned to courtroom number 7, and that thereafter disturbances continued to such an extent that the Court was unable to render its charge to the jury.

Thereafter a recess was called and the proceedings were removed from courtroom number 7 to courtroom number 4 where facilities have been installed for a loud speaker system.

Let the record show that the defendant Mayberry and defendant Codispoti have been brought into court but conducted to a room immediately adjacent to the courtroom where a loud speaker system has been installed and that the record of these proceedings are clearly audible to them.

Let the record further show that the defendant Langnes together with his counsel are present in the courtroom and will be in a position not only to hear but to [fol. 3094c] see the entire proceedings.

MR. LANGNES: Before you begin your summation—

THE COURT: I don't want any more.

MR. LANGNES: I don't have any intention of interrupting you during your summation, but I want to make it clear for the record, and I want the public to understand my words specifically, that like I have stated this morning, I highly and indignantly object to the conduct that you have treated my two co-defendants to. They were merely voicing for their rights, and you arbitrarily denied their rights, and I think that your conduct was tantamount to a communist sadist. That's all I have to say, Your Honor.

MR. LIVINGSTON: Does the Court intend to leave the door open where the parties are sitting?

THE COURT: It is the intention of the Court that the door will be let open unless the disturbance becomes such that we will be compelled to close it.

[fol. 3095]

ORAL CHARGE OF THE COURT

FIOK, J.
GOODWORTH, R.

THE COURT: Members of the Jury, you have been attentively listening to an unusually long case in which it took five weeks to present the evidence. I say to you frankly that all the relevant evidence in this case could and should have been submitted in four days but the for obviously contemptuous conduct of the defendants in this case, and the attempts to present evidence having no probative value determinative of any of the issues involved and for rulings necessitated by attempts to introduce improper evidence.

In this respect you have had the experience of witnessing a trial so utterly horrendous and disgusting in nature that certainly has never been equalled in the annals of this Commonwealth of Pennsylvania, and probably not even in the annals of any state in the union.

* * * *

[fol. 3219]

SENTENCE

THE COURT: Let's proceed. Herbert F. Langnes, Richard Joseph Oliver Mayberry, and Dominick Codispoti, during the trial on charges of holding hostages and for prison breach you have conducted yourselves with such utter contempt of court and such outrageous defiance of and scorn for judicial proceedings that seems unequaled in judicial history. You have deliberately heaped ridicule upon orderly proceedings, and have by your words and actions knowingly intended to impair, taint, and undermine the respect and confidence of the public in our Criminal Courts.

You have by your contumacious conduct attempted to create a circus atmosphere and a sham of this trial. Your actions have created an atmosphere highly detrimental to the proper administration of justice.

You have abused and ridiculed the trial proceedings, defied Court orders, addressed vulgar, sourrulous, and insulting language to the Court, and have wilfully baited the Court in your efforts to obtain a mistrial.

Your actions have brought consternation to the adherence of justice under law and have brought joy and delight in the hearts of abettors bent on destruction of our [fol. 3220] very system of social order and administration.

You have given false hope or aspiration to others to attempt to repeat your disgusting tactics. You have attempted to undermine the very structure of that institution in which you sought the protection of your rights as defendants, and have mistakenly construed the patience of the Court for license to heap your detestable abuse upon it.

You have accused this Court of criminal conspiracy with prison officials to obstruct justice and of entering into a conspiracy with the news media to leak out unwarranted and improper information to poison the minds and inflame the jury. You have made unmitigated attacks on the trial Judge, threatening his life, and referring to him as a dirty S.O.B., a bum, a tyrant, an idiot, a creep, a punk, a fool, a dirty stumbling old dog, a nut,

a Caesar, of being crazy, of conducting a Gilbert and Sullivan comic opera, and of infiltrating the courts with communist tactics.

The Court has endured this day by day outrageous conduct and waited for the disposition of open rebellion and contempt only because of its concern for a fair and impartial trial, and of the impact on the spot punishment might have had on the jury.

I want you and all others inclined towards such conduct [fol. 3221] to know that the Court is charged with the duty of being the primary protector of its judicial dignity and conscience, and of its public standing as a judicial forum.

The time is ripe to protect the interest of the general public in the administration of justice, and to punish for direct criminal contempt I shall impose punishment only for the more glaring acts of contempt.

Richard Mayberry, stand. Richard Mayberry, on November 10, 1966, you have committed a contempt of court by referring to the Court as a "dirty S.O.B." It is the sentence of this court that you be confined by separate and solitary confinement at labor to the State Correctional Institution at Pittsburgh, Pennsylvania for a term of not less than one year nor more than two years, to take effect upon the expiration of the sentence you are now serving.

On November 18, 1966, you have referred to the Court as a Gilbert and Sullivan show, and accused the Court of not knowing how to rule on questions. For this contempt you are sentenced to the State Correctional Institution at Pittsburgh, Pennsylvania for a period of not less than one year nor more than two years, to take effect upon the expiration of the first sentence I have imposed.

On November 23, 1966, you have accused the Court [fol. 3222] of railroading you into a life sentence, and by referring to the Court as a "dirty, tyrannical old dog." It is the sentence of this court that you be confined in the State Correctional Institution at Pittsburgh, Pennsylvania for a period of not less than one year nor more than two years, and this sentence to take effect upon

the expiration of the previous sentences I have just imposed.

On November 28, 1966, you have directed the Court to "keep its mouth shut" when it tried to quiet you down, and while you were questioning your own witness. It is the sentence of this court that you be confined to the State Correctional Institution at Pittsburgh, Pennsylvania, for a period of not less than one year nor more than two years, to take effect upon the expiration of the sentence previously imposed.

On November 29, 1966, you have accused the Court of being "a bum," and working for the prison authorities, of going to hell, of not giving a good G.D. on the Court's suggestions, referring to the Court as a "stumbling dog," and referring to the proceedings as B.S., and inviting the Court to gag you. For these contempts it is the sentence of this court that you be confined in the State Correctional Institution at Pittsburgh, Pennsylvania, for a period of not less than one year nor more than two years, to take effect upon the expiration of the sentence previously imposed.

On December 1, 1966, you directed the Court to keep quiet, of not caring how the Court ruled, and of refusing to remain quiet, that the only way that you will be quiet is to be gagged. You addressed the Court in an insolent manner as follows: "Now, what do you want me to do? Just force me to sit here to be continually being prejudiced by all this here furor and all that is going on?" For this contempt of court it is the sentence of this court that you be confined to the State Correctional Institution at Pittsburgh, Pennsylvania, for a period of not less than one year nor more than two years, this sentence to take effect upon the expiration of the previous sentence that has been just imposed.

On December 2, 1966, you referred to the Court as a "Sullivan" and to the district attorney as a "Gilbert." You have accused the trial Court of conducting a "Spanish inquisition," of railroading you, by the Court, to "a life bit," of being a nut, and "in need of psychiatric treatment," of "doing a good job for Warden Maroney there," and of stating, "but let's keep it looking decent, anyway,

you know. Don't make it so obvious, Your Honor." For [fol. 3224] this contempt of court it is the sentence of the court that you be confined to the State Correctional Institution at Pittsburgh, Pennsylvania, for a period of not less than one year nor more than two years, and that this sentence to take effect upon the expiration of the previous sentence imposed.

On December 5, 1966, you referred to the conduct of the trial "as the craziest trial I have ever seen." You have refused to abide by the rulings of the court in stating, "I don't care if it is contempt or not, but I want a ruling that I am being denied the witnesses I asked for months before the trial began." For this contempt of court you are sentenced to the State Correctional Institution at Pittsburgh, Pennsylvania, for a period of not less than one year nor more than two years, to take effect upon the expiration of the sentence previously imposed.

On this date you have also referred to the Court in scurrilous manner as follows, "I know what the hell you have done, you creep. What do you do, eat at the same club as him"—referring to Superintendent Maroney—"every night? Scared of certain facts that might be brought out?", of stating to the Court in an insolent manner, "Ah, nothing is enough. It's enough when I feel like saying it's enough," and stating to the Court, [fol. 3225] "I will like hell. I will like hell," adhere to the ruling of the Court. I am not making a separate sentence for that.

On December 6, 1966, you have made reference to the Court as a "fool." For this contempt it is the sentence of this court that you be confined to the State Correctional Institution at Pittsburgh, Pennsylvania, for a period of not less than one year nor more than two years, this sentence to take effect upon the expiration of the previous sentence imposed.

On December 7, 1966, you have created a despicable scene in refusing to continue calling your witnesses and in creating such consternation and uproar as to cause a termination of the trial. For this contempt of court you are sentenced to a period of not less than one year

nor more than two years in the State Correctional Institution at Pittsburgh, Pennsylvania, this sentence to take effect upon the expiration of the previous sentence imposed.

On December 9, 1966, you have constantly, boisterously, and insolently interrupted the Court during its attempts to charge the jury, thereby creating an atmosphere of utter confusion and chaos. For this contempt of court it is the sentence of this court that you be confined in the State Correctional Institution at Pittsburgh, Pennsylvania, [fol. 3226] for a period of not less than one year nor more than two years, this sentence to take effect upon the expiration of the previous sentence imposed.

Now, for the charges on which you have been convicted of holding a hostage—

MR. MAYBERRY: Wait a minute, now—

THE COURT: —in a penal institution—

MR. MAYBERRY: —concerning the contempt proceedings—

THE COURT: —it is the sentence of this court that you be confined to the State Correctional Institution at Pittsburgh, Pennsylvania by—

MR. MAYBERRY: —I wish to—

THE COURT: —separate and solitary confinement at labor for a term of not less than fifteen years nor more than thirty years, to take effect upon the expiration of any sentence you are now serving.

On prison breach on which you have been convicted, it is the sentence of this court that you be confined by separate and solitary confinement at labor to the State [fol. 3227] Correctional Institution at Pittsburgh, Pennsylvania, for a term not less than five years nor more than ten years, to take effect upon the expiration of any other sentences previously imposed, or those which you are serving.

You may remove Mr. Mayberry.

(Thereupon Mr. Mayberry was removed from the courtroom.)

* * * *

SUPREME COURT OF THE UNITED STATES

No. 657 Misc., October Term, 1969

RICHARD MAYBERRY, PETITIONER

v.

PENNSYLVANIA

On petition for writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania, Western District.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1389 and placed on the summary calendar.

April 6, 1970

